

CHAMBER ACTION

1 The Commerce Council recommends the following:

2
3 **Council/Committee Substitute**

4 Remove the entire bill and insert:

5
6 A bill to be entitled

7 An act relating to viatical settlements; amending s.
8 517.021, F.S.; revising and providing definitions;
9 creating s. 517.072, F.S.; specifying nonapplication of
10 certain exemptions to viatical settlement investments;
11 specifying the offering of a viatical settlement
12 investment as not an exempt transaction under certain
13 provisions of law; amending s. 517.081, F.S.; authorizing
14 the Financial Services Commission to adopt additional
15 rules relating to securities registration; authorizing the
16 commission to adopt rules establishing requirements and
17 standards for disclosures and records relating to viatical
18 settlement investments; creating s. 517.1215, F.S.;
19 requiring the commission to adopt rules specifying
20 requirements for certain investment advisors; requiring
21 the commission to establish by rule rules of conduct and
22 prohibited business practices for investment advisers and
23 associated persons; providing requirements; creating s.

24 | 517.1217, F.S.; authorizing the commission to establish by
 25 | rule rules of conduct and prohibited business practices
 26 | for dealers and associated persons; providing
 27 | requirements; amending s. 624.501, F.S.; including agents
 28 | making an appointment under certain life insurance agent
 29 | fee provisions; amending ss. 626.015, 626.112, 626.207,
 30 | and 626.331, F.S., to conform; amending s. 626.611, F.S.;
 31 | providing an additional ground for compulsory refusal,
 32 | suspension, or revocation of certain licenses or
 33 | appointments for transactions relating to viatical
 34 | settlement contracts; amending s. 626.777, F.S., to
 35 | conform; amending s. 626.7845, F.S.; prohibiting certain
 36 | activities by a person relating to viatical settlement
 37 | contracts unless as a licensed life agent; amending s.
 38 | 626.9911, F.S.; revising definitions; amending s.
 39 | 626.9912, F.S.; providing an additional requirement for
 40 | viatical settlement provider license applications;
 41 | amending s. 626.9913, F.S.; specifying additional
 42 | requirements for annual statements by viatical settlement
 43 | provider licensees; providing an alternative bond
 44 | provision for certain viatical settlement providers for a
 45 | certain time period; prohibiting certain persons from
 46 | levying upon certain assets or securities under certain
 47 | circumstances; amending s. 626.9914, F.S.; including the
 48 | authority to deny a license among the adverse actions the
 49 | Office of Insurance Regulation may take against a viatical
 50 | settlement provider for certain actions; providing an
 51 | additional ground for the office to take adverse actions;

52 | amending s. 626.9916, F.S.; revising licensure
 53 | requirements for viatical settlement brokers and life
 54 | agents; providing for self-appointment; providing for
 55 | transfers of appointments; providing for termination of
 56 | licenses; specifying a fiduciary duty of viatical
 57 | settlement brokers; prohibiting dividing or sharing
 58 | compensation received by a life agent for certain
 59 | activities under certain circumstances; creating s.
 60 | 626.99175, F.S.; requiring registration to operate as a
 61 | life expectancy provider; providing registration for
 62 | requirements; requiring certain application information;
 63 | requiring registered life expectancy providers to
 64 | periodically file audits with the office; providing audit
 65 | requirements; authorizing certain subsidiaries of life
 66 | expectancy providers to operate as a provider under
 67 | certain circumstances; prohibiting certain providers,
 68 | brokers, and agents from owning or being an officer,
 69 | director, or employee of a life expectancy provider;
 70 | requiring providers to provide the office with advance
 71 | notice of certain changes; requiring providers to retain
 72 | copies of certain information and documents; providing an
 73 | exception; providing procedures for approval or denial of
 74 | applications; specifying grounds for denial of an
 75 | application; authorizing the office to assess
 76 | administrative fines under certain circumstances;
 77 | authorizing the office to place a provider on probation
 78 | for a certain period; specifying certain activities
 79 | violations; amending ss. 626.9919, 626.992, and 626.9921,

80 F.S., to conform; amending s. 626.9922, F.S.; specifying
 81 office jurisdiction over certain viatical settlement
 82 purchase agreements; authorizing the office to refer
 83 certain cases to the United States Securities and Exchange
 84 Commission for administrative action under certain
 85 circumstances; providing application to life expectancy
 86 providers; amending ss. 626.99245, 626.9925, 626.9926, and
 87 626.9927, F.S., to conform; amending s. 626.99275, F.S.;
 88 revising prohibited practices to apply to issuing life
 89 expectancies and change a viator's residency for certain
 90 purposes; providing a criminal penalty; amending s.
 91 626.99278, F.S.; providing for application to registered
 92 life expectancy providers; requiring an anti-fraud plan to
 93 include a life expectancy accuracy review process;
 94 amending ss. 626.9928 and 626.99285, F.S., to conform;
 95 amending s. 626.99295, F.S.; revising application of a
 96 grace period for certain viatical settlement purchase
 97 agreements; repealing s. 626.9917, F.S., relating to
 98 denial, suspension, revocation, or nonrenewal of viatical
 99 settlement broker licenses; repealing s. 626.9918, F.S.,
 100 relating to effect of suspension or revocation of viatical
 101 settlement broker licenses; repealing s. 626.99235, F.S.,
 102 relating to disclosures to viatical settlement purchasers;
 103 repealing s. 626.99236, F.S., relating to further
 104 disclosures to viatical settlement purchasers; repealing
 105 s. 626.99277, F.S., relating to false representations;
 106 providing an effective date.

107

HB 1437

2005
CS

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

109

110 Section 1. Subsections (19) and (21) of section 517.021,
111 Florida Statutes, are renumbered as subsections (20) and (22),
112 respectively, present subsection (20) is renumbered as
113 subsection (21) and amended, and subsections (19) and (23) are
114 added to said section, to read:

115 517.021 Definitions.--When used in this chapter, unless
116 the context otherwise indicates, the following terms have the
117 following respective meanings:

118 (19) "Qualified institutional buyer" means any qualified
119 institutional buyer, as defined in United States Securities and
120 Exchange Commission Rule 144A, 17 C.F.R. 230.144A(a), under the
121 Securities Act of 1933, as amended, or any foreign buyer that
122 satisfies the minimum financial requirements set forth in such
123 rule.

124 ~~(21)~~~~(20)~~ "Security" includes any of the following:

125 (a) A note.

126 (b) A stock.

127 (c) A treasury stock.

128 (d) A bond.

129 (e) A debenture.

130 (f) An evidence of indebtedness.

131 (g) A certificate of deposit.

132 (h) A certificate of deposit for a security.

133 (i) A certificate of interest or participation.

134 (j) A whiskey warehouse receipt or other commodity

135 warehouse receipt.

HB 1437

2005
CS

- 136 (k) A certificate of interest in a profit-sharing
- 137 agreement or the right to participate therein.
- 138 (l) A certificate of interest in an oil, gas, petroleum,
- 139 mineral, or mining title or lease or the right to participate
- 140 therein.
- 141 (m) A collateral trust certificate.
- 142 (n) A reorganization certificate.
- 143 (o) A preorganization subscription.
- 144 (p) Any transferable share.
- 145 (q) An investment contract.
- 146 (r) A beneficial interest in title to property, profits,
- 147 or earnings.
- 148 (s) An interest in or under a profit-sharing or
- 149 participation agreement or scheme.
- 150 (t) Any option contract which entitles the holder to
- 151 purchase or sell a given amount of the underlying security at a
- 152 fixed price within a specified period of time.
- 153 (u) Any other instrument commonly known as a security,
- 154 including an interim or temporary bond, debenture, note, or
- 155 certificate.
- 156 (v) Any receipt for a security, or for subscription to a
- 157 security, or any right to subscribe to or purchase any security.
- 158 (w) A viatical settlement investment.
- 159 (23) "Viatical settlement investment" means an agreement
- 160 for the purchase, sale, assignment, transfer, devise, or bequest
- 161 of all or any portion of a legal or equitable interest in a
- 162 viaticated policy as defined in chapter 626. The term does not
- 163 include:

HB 1437

2005
CS

164 (a) The transfer or assignment of an interest in a
 165 previously viaticated policy from a natural person who transfers
 166 or assigns no more than one such interest in 1 calendar year.

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

171 (c) The transfer or assignment of a viaticated policy from
 172 a licensed viatical settlement provider to another licensed
 173 viatical settlement provider, a related provider trust, or a
 174 financing entity, as those terms are defined in s. 626.9911, or
 175 to a contingency insurer provided that such transfer or
 176 assignment is not the direct or indirect promotion of any scheme
 177 or enterprise with the intent of violating or evading any
 178 provision of this chapter.

179 (d) The transfer or assignment of a viaticated policy to a
 180 bank, trust company, savings institution, insurance company,
 181 dealer, investment company as defined by the Investment Company
 182 Act of 1940, pension or profit-sharing trust, or qualified
 183 institutional buyer as defined by United States Securities and
 184 Exchange Commission Rule 144A, 17 C.F.R. 230.144A(a), or to an
 185 accredited investor as defined by Rule 501 of Regulation D of
 186 the Securities Act Rules, provided such transfer or assignment
 187 is not for the direct or indirect promotion of any scheme or
 188 enterprise with the intent of violating or evading any provision
 189 of this chapter.

190 (e) The transfer or assignment of a viaticated policy by a
 191 conservator of a viatical settlement provider appointed by a

HB 1437

2005
CS

192 court of competent jurisdiction who transfers or assigns
 193 ownership of viaticated policies pursuant to that court's order.

194 Section 2. Section 517.072, Florida Statutes, is created
 195 to read:

196 517.072 Viatical settlement investments.--The exemptions
 197 provided for by ss. 517.051(6), (8), and (10) do not apply to a
 198 viatical settlement investment. The offering of a viatical
 199 settlement investment is not an exempt transaction under s.
 200 517.061(2), (3), (8), (11), and (18), regardless of whether the
 201 offering otherwise complies with the conditions of that section,
 202 unless such offering is to a qualified institutional buyer.

203 Section 3. Subsection (7) of section 517.081, Florida
 204 Statutes, is amended, and subsection (8) is added to said
 205 section, to read:

206 517.081 Registration procedure.--

207 (7) If upon examination of any application the office
 208 shall find that the sale of the security referred to therein
 209 would not be fraudulent and would not work or tend to work a
 210 fraud upon the purchaser, that the terms of the sale of such
 211 securities would be fair, just, and equitable, and that the
 212 enterprise or business of the issuer is not based upon unsound
 213 business principles, it shall record the registration of such
 214 security in the register of securities; and thereupon such
 215 security so registered may be sold by any registered dealer,
 216 subject, however, to the further order of the office. In order
 217 to determine if an offering is fair, just, and equitable, the
 218 commission may by rule establish requirements and standards for
 219 the filing, content, and circulation of any preliminary, final,

HB 1437

2005
CS

220 or amended prospectus and other sales literature and may by rule
 221 establish merit qualification criteria relating to the issuance
 222 of equity securities, debt securities, insurance company
 223 securities, real estate investment trusts (REITs), and other
 224 traditional and nontraditional investments, including, but not
 225 limited to, oil and gas investments. The criteria may include
 226 such elements as the promoter's equity investment ratio, the
 227 financial condition of the issuer, the voting rights of
 228 shareholders, the grant of options or warrants to underwriters
 229 and others, loans and other affiliated transaction, the use or
 230 refund of proceeds of the offering, and such other relevant
 231 criteria as the office in its judgment may deem necessary to
 232 such determination.

233 (8) The commission may by rule establish requirements and
 234 standards for:

235 (a) Disclosures to purchasers of viatical settlement
 236 investments.

237 (b) Recordkeeping requirements for sellers of viatical
 238 settlement investments.

239 Section 4. Section 517.1215, Florida Statutes, is created
 240 to read:

241 517.1215 Requirements, rules of conduct, and prohibited
 242 business practices for investment advisors and their associated
 243 persons.--

244 (1) By rule, the commission shall specify requirements for
 245 investment advisors deemed to have custody of client funds which
 246 concern the following:

HB 1437

2005
CS

247 (a) Notification of custody of, maintenance of, and
248 safeguards for client funds.

249 (b) Communications with clients and independent
250 representatives.

251 (c) Requirements for investment advisers who have custody
252 of pooled investments.

253 (d) Exceptions to the custody requirements.

254
255 In adopting the rules, the commission shall consider the rules
256 and regulations of the federal regulatory authority and the
257 North American Securities Administrators Association.

258 (2) The commission shall by rule establish rules of
259 conduct and prohibited business practices for investment
260 advisers and their associated persons. In adopting the rules,
261 the commission shall consider general industry standards as
262 expressed in the rules and regulations of the various federal
263 and self-regulatory agencies and regulatory associations,
264 including, but not limited to, the United States Securities and
265 Exchange Commission, the National Association of Securities
266 Dealers, and the North American Securities Administrators
267 Association.

268 Section 5. Section 517.1217, Florida Statutes, is created
269 to read:

270 517.1217 Prohibited business practices and rules of
271 conduct for dealers and their associated persons.--The
272 commission by rule may establish rules of conduct and prohibited
273 business practices for dealers and their associated persons. In
274 adopting the rules, the commission shall consider general

HB 1437

2005
CS

275 | industry standards as expressed in the rules and regulations of
276 | the various federal and self-regulatory agencies and regulatory
277 | associations, including, but not limited to, the United States
278 | Securities and Exchange Commission, the National Association of
279 | Securities Dealers, the stock exchanges, and the North American
280 | Securities Administrators Association.

281 | Section 6. Paragraph (a) of subsection (7) of section
282 | 624.501, Florida Statutes, is amended to read:

283 | 624.501 Filing, license, appointment, and miscellaneous
284 | fees.--The department, commission, or office, as appropriate,
285 | shall collect in advance, and persons so served shall pay to it
286 | in advance, fees, licenses, and miscellaneous charges as
287 | follows:

288 | (7) Life insurance agents.

289 | (a) Agent's original appointment and biennial renewal or
290 | continuation thereof, each insurer or agent making an
291 | appointment:

292	Appointment fee.....	\$42.00
293	State tax.....	12.00
294	County tax.....	6.00
295	Total.....	\$60.00

296 | Section 7. Subsection (10) of section 626.015, Florida
297 | Statutes, is amended to read:

298 | 626.015 Definitions.--As used in this part:

299 | (10) "Life agent" means an individual representing an
300 | insurer as to life insurance and annuity contracts, or acting as
301 | a viatical settlement broker as defined in s. 626.9911,
302 | including agents appointed to transact life insurance, fixed-

HB 1437

2005
CS

303 dollar annuity contracts, or variable contracts by the same
304 insurer.

305 Section 8. Paragraph (b) of subsection (1) of section
306 626.112, Florida Statutes, is amended to read:

307 626.112 License and appointment required; agents, customer
308 representatives, adjusters, insurance agencies, service
309 representatives, managing general agents.--

310 (1)

311 (b) Except as provided in subsection (6) or in applicable
312 department rules, and in addition to other conduct described in
313 this chapter with respect to particular types of agents, a
314 license as an insurance agent, service representative, customer
315 representative, or limited customer representative is required
316 in order to engage in the solicitation of insurance. For
317 purposes of this requirement, as applicable to any of the
318 license types described in this section, the solicitation of
319 insurance is the attempt to persuade any person to purchase an
320 insurance product by:

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

323 2. Distributing an invitation to contract to prospective
324 purchasers;

325 3. Making general or specific recommendations as to
326 insurance products;

327 4. Completing orders or applications for insurance
328 products; ~~or~~

329 5. Comparing insurance products, advising as to insurance
330 matters, or interpreting policies or coverages; or

331 6. Offering or attempting to negotiate on behalf of
 332 another person a viatical settlement contract as defined in s.
 333 626.9911.

334
 335 However, an employee leasing company licensed pursuant to
 336 chapter 468 which is seeking to enter into a contract with an
 337 employer that identifies products and services offered to
 338 employees may deliver proposals for the purchase of employee
 339 leasing services to prospective clients of the employee leasing
 340 company setting forth the terms and conditions of doing
 341 business; classify employees as permitted by s. 468.529; collect
 342 information from prospective clients and other sources as
 343 necessary to perform due diligence on the prospective client and
 344 to prepare a proposal for services; provide and receive
 345 enrollment forms, plans, and other documents; and discuss or
 346 explain in general terms the conditions, limitations, options,
 347 or exclusions of insurance benefit plans available to the client
 348 or employees of the employee leasing company were the client to
 349 contract with the employee leasing company. Any advertising
 350 materials or other documents describing specific insurance
 351 coverages must identify and be from a licensed insurer or its
 352 licensed agent or a licensed and appointed agent employed by the
 353 employee leasing company. The employee leasing company may not
 354 advise or inform the prospective business client or individual
 355 employees of specific coverage provisions, exclusions, or
 356 limitations of particular plans. As to clients for which the
 357 employee leasing company is providing services pursuant to s.
 358 468.525(4), the employee leasing company may engage in

HB 1437

2005
CS

359 | activities permitted by ss. 626.7315, 626.7845, and 626.8305,
 360 | subject to the restrictions specified in those sections. If a
 361 | prospective client requests more specific information concerning
 362 | the insurance provided by the employee leasing company, the
 363 | employee leasing company must refer the prospective business
 364 | client to the insurer or its licensed agent or to a licensed and
 365 | appointed agent employed by the employee leasing company.

366 | Section 9. Section 626.207, Florida Statutes, is amended
 367 | to read:

368 | 626.207 Department rulemaking authority; waiting periods
 369 | for applicants; penalties against licensees.--

370 | (1) The department shall adopt rules establishing specific
 371 | waiting periods for applicants to become eligible for licensure
 372 | following denial, suspension, or revocation pursuant to s.
 373 | 626.611, s. 626.621, s. 626.8437, s. 626.844, s. 626.935, ~~s.~~
 374 | ~~626.9917~~, s. 634.181, s. 634.191, s. 634.320, s. 634.321, s.
 375 | 634.422, s. 634.423, s. 642.041, or s. 642.043. The purpose of
 376 | the waiting periods is to provide sufficient time to demonstrate
 377 | reformation of character and rehabilitation. The waiting periods
 378 | shall vary based on the type of conduct and the length of time
 379 | since the conduct occurred and shall also be based on the
 380 | probability that the propensity to commit illegal conduct has
 381 | been overcome. The waiting periods may be adjusted based on
 382 | aggravating and mitigating factors established by rule and
 383 | consistent with this purpose.

384 | (2) The department shall adopt rules establishing specific
 385 | penalties against licensees for violations of s. 626.611, s.
 386 | 626.621, s. 626.8437, s. 626.844, s. 626.935, ~~s. 626.9917~~, s.

HB 1437

2005
CS

387 634.181, s. 634.191, s. 634.320, s. 634.321, s. 634.422, s.
 388 634.423, s. 642.041, or s. 642.043. The purpose of the
 389 revocation or suspension is to provide a sufficient penalty to
 390 deter future violations of the Florida Insurance Code. The
 391 imposition of a revocation or the length of suspension shall be
 392 based on the type of conduct and the probability that the
 393 propensity to commit further illegal conduct has been overcome
 394 at the time of eligibility for relicensure. The revocation or
 395 the length of suspension may be adjusted based on aggravating or
 396 mitigating factors, established by rule and consistent with this
 397 purpose.

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

400 626.331 Number of appointments permitted or required.--

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

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

407 626.611 Grounds for compulsory refusal, suspension, or
 408 revocation of agent's, title agency's, adjuster's, customer
 409 representative's, service representative's, or managing general
 410 agent's license or appointment.--The department shall deny an
 411 application for, suspend, revoke, or refuse to renew or continue
 412 the license or appointment of any applicant, agent, title
 413 agency, adjuster, customer representative, service
 414 representative, or managing general agent, and it shall suspend

HB 1437

2005
CS

415 or revoke the eligibility to hold a license or appointment of
 416 any such person, if it finds that as to the applicant, licensee,
 417 or appointee any one or more of the following applicable grounds
 418 exist:

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

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

422 (b) No longer meeting the requirements for initial
 423 licensure.

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

430 (d) Dealing in bad faith with viators.

431 Section 12. Section 626.777, Florida Statutes, is amended
 432 to read:

433 626.777 Scope of this part.--This part applies only to
 434 agents of life insurers, ~~and to~~ agents who are appointed by the
 435 same insurer as to both life insurance and health insurance, and
 436 agents who perform the functions of a viatical settlement broker
 437 as defined in s. 626.9911.

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

440 626.7845 Prohibition against unlicensed transaction of
 441 life insurance.--

HB 1437

2005
CS

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

445 (a) Solicit insurance or annuities or procure
446 applications; ~~or~~

447 (b) In this state, engage or hold himself or herself out
448 as engaging in the business of analyzing or abstracting
449 insurance policies or of counseling or advising or giving
450 opinions to persons relative to insurance or insurance contracts
451 other than:

452 1. As a consulting actuary advising an insurer; or

453 2. As to the counseling and advising of labor unions,
454 associations, trustees, employers, or other business entities,
455 the subsidiaries and affiliates of each, relative to their
456 interests and those of their members or employees under
457 insurance benefit plans; or

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

461 Section 14. Section 626.9911, Florida Statutes, is amended
462 to read:

463 626.9911 Definitions.--As used in this act, the term:

464 (1)~~(14)~~ "Financing entity" means an underwriter, placement
465 agent, lender, purchaser of securities, or purchaser of a policy
466 or certificate from a viatical settlement provider, credit
467 enhancer, or any entity that has direct ownership in a policy or
468 certificate that is the subject of a viatical settlement
469 contract, but whose principal activity related to the

HB 1437

2005
CS

470 transaction is providing funds or credit enhancement to effect
 471 the viatical settlement or the purchase of one or more
 472 viaticated ~~viatical~~ policies and who has an agreement in writing
 473 with one or more licensed viatical settlement providers to
 474 finance the acquisition of viatical settlement contracts. The
 475 term does not include a nonaccredited investor, ~~a viatical~~
 476 ~~settlement purchaser~~, or other natural person. A financing
 477 entity may not enter into a viatical settlement contract.

478 (2)~~(1)~~ "Independent third-party trustee or escrow agent"
 479 means an attorney, certified public accountant, financial
 480 institution, or other person providing escrow services under the
 481 authority of a regulatory body. The term does not include any
 482 person associated, affiliated, or under common control with a
 483 viatical settlement provider or viatical settlement broker.

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

487 (4) "Life expectancy provider" means a person who
 488 determines, or holds himself or herself out as determining, life
 489 expectancies or mortality ratings used to determine life
 490 expectancies:

491 (a) On behalf of a viatical settlement provider, viatical
 492 settlement broker, life agent, or a person engaged in the
 493 business of viatical settlements;

494 (b) In connection with a viatical settlement investment,
 495 pursuant to s. 517.021(22); or

496 (c) On residents of this state in connection with a
 497 viatical settlement contract or viatical settlement investment.

HB 1437

2005
CS

498 (5)~~(2)~~ "Person" has the meaning specified in s. 1.01.

499 (6)~~(12)~~ "Related form" means any form, created by or on
 500 behalf of a licensee, which a viator ~~or viatical settlement~~
 501 ~~purchaser~~ is required to sign or initial. The forms include, but
 502 are not limited to, a power of attorney, a release of medical
 503 information form, a suitability questionnaire, a disclosure
 504 document, or any addendum, schedule, or amendment to a viatical
 505 settlement contract ~~or viatical settlement purchase agreement~~
 506 considered necessary by a provider to effectuate a viatical
 507 settlement transaction.

508 (7) "Related provider trust" means a titling trust or
 509 other trust established by a licensed viatical settlement
 510 provider or financing entity for the sole purpose of holding the
 511 ownership or beneficial interest in purchased policies in
 512 connection with a financing transaction. The trust must have a
 513 written agreement with a licensed viatical settlement provider
 514 or financing entity under which the licensed viatical settlement
 515 provider or financing entity is responsible for insuring
 516 compliance with all statutory and regulatory requirements and
 517 under which the trust agrees to make all records and files
 518 relating to viatical settlement transactions available to the
 519 office as if those records and files were maintained directly by
 520 the licensed viatical settlement provider. This term does not
 521 include an independent third-party trustee or escrow agent or a
 522 trust that does not enter into agreements with a viator. A
 523 related provider trust shall be subject to all provisions of
 524 this act that apply to the viatical settlement provider who
 525 established the related provider trust, except s. 626.9912,

HB 1437

2005
CS

526 | which shall not be applicable. A viatical settlement provider
 527 | may establish no more than one related provider trust, and the
 528 | sole trustee of such related provider trust shall be the
 529 | viatical settlement provider licensed under s. 626.9912. The
 530 | name of the licensed viatical settlement provider shall be
 531 | included within the name of the related provider trust.

532 | (8)~~(13)~~ "Special purpose entity" means an entity
 533 | established by a licensed viatical settlement provider or by a
 534 | financing entity, which may be a corporation, partnership,
 535 | trust, limited liability company, or other similar entity formed
 536 | solely to provide, either directly or indirectly, access to
 537 | institutional capital markets to a viatical settlement provider
 538 | or financing entity. A special purpose entity shall not enter
 539 | into a viatical settlement contract ~~or a viatical settlement~~
 540 | ~~purchase agreement.~~

541 | (9)~~(3)~~ "Viatical settlement broker" means a person who, on
 542 | behalf of a viator and for a fee, commission, or other valuable
 543 | consideration, offers or attempts to negotiate viatical
 544 | settlement contracts between a viator resident in this state and
 545 | one or more viatical settlement providers. Notwithstanding the
 546 | manner in which the viatical settlement broker is compensated, a
 547 | viatical settlement broker is deemed to represent only the
 548 | viator and owes a fiduciary duty to the viator to act according
 549 | to the viator's instructions and in the best interest of the
 550 | viator. The term does not include an attorney, licensed
 551 | Certified Public Accountant, or investment adviser lawfully
 552 | registered under chapter 517, who is retained to represent the

HB 1437

2005
CS

553 | viator and whose compensation is paid directly by or at the
554 | direction and on behalf of the viator.

555 | ~~(10)(4)~~ "Viatical settlement contract" means a written
556 | agreement entered into between a viatical settlement provider,
557 | or its related provider trust, and a viator. The viatical
558 | settlement contract includes an agreement to transfer ownership
559 | or change the beneficiary designation of a life insurance policy
560 | at a later date, regardless of the date that compensation is
561 | paid to the viator. The agreement must establish the terms under
562 | which the viatical settlement provider will pay compensation or
563 | anything of value, which compensation or value is less than the
564 | expected death benefit of the insurance policy or certificate,
565 | in return for the viator's assignment, transfer, sale, devise,
566 | or bequest of the death benefit or ownership of all or a portion
567 | of the insurance policy or certificate of insurance to the
568 | viatical settlement provider. A viatical settlement contract
569 | also includes a contract for a loan or other financial
570 | transaction secured primarily by an individual or group life
571 | insurance policy, other than a loan by a life insurance company
572 | pursuant to the terms of the life insurance contract, or a loan
573 | secured by the cash value of a policy.

574 | (11) "Viatical settlement investment" has the same meaning
575 | as specified in s. 517.021.

576 | ~~(12)(5)~~ "Viatical settlement provider" means a person who,
577 | in this state, from this state, or with a resident of this
578 | state, effectuates a viatical settlement contract. The term does
579 | not include:

HB 1437

2005
CS

580 (a) Any bank, savings bank, savings and loan association,
581 credit union, or other licensed lending institution that takes
582 an assignment of a life insurance policy as collateral for a
583 loan.

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

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

591 (d) A trust that meets the definition of a "related
592 provider trust."

593 (e) A viator in this state.

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

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

596 (13)~~(11)~~ "Viaticated policy" means a life insurance
597 policy, or a certificate under a group policy, which is the
598 subject of a viatical settlement contract.

599 (14)~~(6)~~ "Viator" means the owner of a life insurance
600 policy or a certificateholder under a group policy, which policy
601 is not a previously viaticated policy, who enters or seeks to
602 enter into a viatical settlement contract. This term does not
603 include a ~~viatical settlement purchaser or a~~ viatical settlement
604 provider or any person acquiring a policy or interest in a
605 policy from a viatical settlement provider, nor does it include
606 an independent third-party trustee or escrow agent.

HB 1437

2005
CS

607 ~~(8) "Viatical settlement purchase agreement" means a~~
 608 ~~contract or agreement, entered into by a viatical settlement~~
 609 ~~purchaser, to which the viator is not a party, to purchase a~~
 610 ~~life insurance policy or an interest in a life insurance policy,~~
 611 ~~which is entered into for the purpose of deriving an economic~~
 612 ~~benefit. The term also includes purchases made by viatical~~
 613 ~~settlement purchasers from any person other than the provider~~
 614 ~~who effectuated the viatical settlement contract.~~

615 ~~(9) "Viatical settlement purchaser" means a person who~~
 616 ~~gives a sum of money as consideration for a life insurance~~
 617 ~~policy or an equitable or legal interest in the death benefits~~
 618 ~~of a life insurance policy that has been or will be the subject~~
 619 ~~of a viatical settlement contract, for the purpose of deriving~~
 620 ~~an economic benefit, including purchases made from any person~~
 621 ~~other than the provider who effectuated the viatical settlement~~
 622 ~~contract or an entity affiliated with the provider. The term~~
 623 ~~does not include a licensee under this part, an accredited~~
 624 ~~investor as defined in Rule 501, Regulation D of the Securities~~
 625 ~~Act Rules, or a qualified institutional buyer as defined by Rule~~
 626 ~~144(a) of the Federal Securities Act, a special purpose entity,~~
 627 ~~a financing entity, or a contingency insurer. The above~~
 628 ~~references to Rule 501, Regulation D and Rule 144(a) of the~~
 629 ~~Federal Securities Act are used strictly for defining purposes~~
 630 ~~and shall not be interpreted in any other manner. Any person who~~
 631 ~~claims to be an accredited investor shall sign an affidavit~~
 632 ~~stating that he or she is an accredited investor, the basis of~~
 633 ~~that claim, and that he or she understands that as an accredited~~
 634 ~~investor he or she will not be entitled to certain protections~~

HB 1437

2005
CS

635 ~~of the Viatical Settlement Act. This affidavit must be kept with~~
 636 ~~other documents required to be maintained by this act.~~

637 ~~(10) "Viatical settlement sales agent" means a person~~
 638 ~~other than a licensed viatical settlement provider who arranges~~
 639 ~~the purchase through a viatical settlement purchase agreement of~~
 640 ~~a life insurance policy or an interest in a life insurance~~
 641 ~~policy.~~

642 Section 15. Paragraph (f) of subsection (3) and subsection
 643 (4) of section 626.9912, Florida Statutes, are amended,
 644 paragraph (g) of subsection (3) of said section is redesignated
 645 as paragraph (h), and new paragraph (g) is added to said
 646 subsection, to read:

647 626.9912 Viatical settlement provider license required;
 648 application for license.--

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

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

654 (g) A general description of the method the viatical
 655 settlement provider will use in determining life expectancies,
 656 including a description of the applicant's intended receipt of
 657 life expectancies, the applicant's intended use of life
 658 expectancy providers, and the written plan or plans of policies
 659 and procedures used to determine life expectancies.

660 (4) The office may not issue a license to an entity other
 661 than a natural person if it is not satisfied that all officers,
 662 directors, employees, stockholders, partners, and any other

HB 1437

2005
CS

663 persons who exercise or have the ability to exercise effective
 664 control of the entity or who have the ability to influence the
 665 transaction of business by the entity meet the standards of this
 666 act and have not violated any provision of this act or rules of
 667 the commission related to the business of viatical settlement
 668 contracts ~~or viatical settlement purchase agreements.~~

669 Section 16. Section 626.9913, Florida Statutes, is amended
 670 to read:

671 626.9913 Viatical settlement provider license continuance;
 672 annual report; fees; deposit.--

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

675 (2) Annually, on or before March 1, the viatical
 676 settlement provider licensee shall file a statement containing
 677 information the commission requires and shall pay to the office
 678 a license fee in the amount of \$500. The annual statement shall
 679 include audited financial statements prepared in accordance with
 680 generally accepted accounting principles by an independent
 681 certified public accountant as of the last day of the preceding
 682 calendar year. The annual statement shall also provide the
 683 office with a report of all life expectancy providers who have
 684 provided life expectancies, directly or indirectly, to the
 685 viatical settlement provider for use in connection with a
 686 viatical settlement contract or a viatical settlement
 687 investment. A viatical settlement provider shall include in all
 688 statements filed with the office all information requested by
 689 the office regarding a related provider trust established by the
 690 viatical settlement provider. The office may require more

HB 1437

2005
CS

691 frequent reporting. Failure to timely file the annual statement
692 or to timely pay the license fee is grounds for immediate
693 suspension of the license.

694 (3) To ensure the faithful performance of its obligations
695 to its viators in the event of insolvency or the loss of its
696 license, a viatical settlement provider licensee must deposit
697 and maintain deposited in trust with the department securities
698 eligible for deposit under s. 625.52, having at all times a
699 value of not less than \$100,000, provided a viatical settlement
700 provider licensed prior to June 1, 2004, that has deposited and
701 maintains continuously deposited in trust with the department
702 securities in the amount of \$25,000 and which posted and
703 maintains continuously posted a security bond acceptable to the
704 department in the amount of \$75,000, has until June 1, 2005, to
705 comply with the requirements of this subsection. ~~As an~~
706 ~~alternative to meeting the \$100,000 deposit requirement, the~~
707 ~~provider may deposit and maintain deposited in trust with the~~
708 ~~department such securities in the amount of \$25,000 and post~~
709 ~~with the office a surety bond acceptable to the office in the~~
710 ~~amount of \$75,000.~~

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

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

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

Page 26 of 48

HB 1437

2005
CS

719 626.9914 Suspension, revocation, or nonrenewal of viatical
720 settlement provider license; grounds; administrative fine.--

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

724 (a) Has made a misrepresentation in the application for
725 the license;

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

729 (c) Demonstrates a pattern of unreasonable payments to
730 viators;

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

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

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

739 (g) Deals in bad faith with viators;

740 (h) Has violated any provision of the insurance code or of
741 this act;

742 (i) Employs any person who materially influences the
743 licensee's conduct and who fails to meet the requirements of
744 this act; ~~or~~

745 (j) No longer meets the requirements for initial
746 licensure; or

HB 1437

2005
CS

747 (k) Obtains or uses life expectancies from life expectancy
 748 providers who are not registered with the office pursuant to
 749 this act.

750 Section 18. Section 626.9916, Florida Statutes, is amended
 751 to read:

752 626.9916 Viatical settlement broker and life agent license
 753 required; ~~application for license.--~~

754 (1) After July 1, 2006 ~~1996~~, a person, other than a life
 755 agent licensed under this chapter, may not in this state, from
 756 this state, or with a resident of this state perform the
 757 functions of a viatical settlement broker ~~as defined in this act~~
 758 ~~without first having obtained a license from the department.~~

759 (2) Before performing the functions of a viatical
 760 settlement broker, a life agent shall appoint himself or herself
 761 with the department and pay applicable fees pursuant to s.
 762 624.501(7)(a). ~~Application for a viatical settlement broker~~
 763 ~~license must be made to the department by the applicant on a~~
 764 ~~form prescribed by the department, under oath, and signed by the~~
 765 ~~applicant. The application must be accompanied by a \$50 filing~~
 766 ~~fee. If the applicant is a corporation, the application must be~~
 767 ~~under oath and signed by the president and the secretary of the~~
 768 ~~corporation.~~

769 (3) Each natural person who on July 1, 2005, held a
 770 viatical settlement broker's license and self-appointment may,
 771 upon obtaining a life agent license on or before July 1, 2006,
 772 transfer an existing broker self-appointment to such license. ~~In~~
 773 ~~the application, the applicant must provide all of the~~
 774 ~~following:~~

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

781 ~~(b) A copy of the applicant's basic organizational~~
 782 ~~documents, if any, including the articles of incorporation,~~
 783 ~~articles of association, partnership agreement, trust agreement,~~
 784 ~~or other similar documents, together with all amendments to such~~
 785 ~~documents.~~

786 ~~(c) If the applicant is not a natural person, a list~~
 787 ~~showing the name, business and residence addresses, and official~~
 788 ~~position of each individual who is responsible for conduct of~~
 789 ~~the applicant's affairs, including, but not limited to, any~~
 790 ~~member of the applicant's board of directors, board of trustees,~~
 791 ~~executive committee, or other governing board or committee and~~
 792 ~~any other person or entity owning or having the right to acquire~~
 793 ~~10 percent or more of the voting securities of the applicant.~~

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

796 ~~1. A sworn biographical statement on forms supplied by the~~
 797 ~~department.~~

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

HB 1437

2005
CS

801 ~~3. Authority, if required by the department, for release~~
802 ~~of information relating to the investigation of the individual's~~
803 ~~background.~~

804 ~~(e) Such other information as the department deems~~
805 ~~necessary to determine that the individual applicant and the~~
806 ~~individuals identified under paragraph (c) are competent and~~
807 ~~trustworthy and can lawfully and successfully act as a viatical~~
808 ~~settlement provider.~~

809 (4) All viatical settlement broker licenses shall
810 terminate on July 1, 2006, and shall not be subject to
811 continuation or renewal. Any natural person who is employed by
812 or otherwise represents a viatical settlement broker licensee,
813 which broker licensee is not a natural person, must also be
814 licensed as a viatical settlement broker if such employee or
815 other representative performs the functions of a viatical
816 settlement broker as defined in this act.

817 (5) Notwithstanding the manner in which the viatical
818 settlement broker is compensated, he or she is deemed to
819 represent only the viator and owes a fiduciary duty to the
820 viator to act according to the viator's instructions and in the
821 best interest of the viator. The department may not issue a
822 license to an applicant if it is not satisfied that the
823 applicant, if a natural person, or all officers, directors,
824 employees, stockholders, and partners who exercise or have the
825 ability to exercise effective control of the applicant or who
826 have the ability to influence the transaction of business by the
827 applicant, if the applicant is not a natural person, meet the
828 standards of this act and have not violated any provision of

Page 30 of 48

CODING: Words ~~stricken~~ are deletions; words underlined are additions.

hb1437-01-c1

HB 1437

2005
CS

829 ~~this act or rules of the department related to the business of~~
830 ~~viatical settlement contracts.~~

831 (6) The compensation received by a life agent for
832 activities performed as a viatical settlement broker may not be
833 divided or shared with another person unless such other person
834 is a life agent licensed under this chapter and appointed as
835 provided in this part. ~~The department may specify the form of~~
836 ~~the license and may require photographing of the applicant as~~
837 ~~part of the application process.~~

838 ~~(7) Upon the filing of a sworn application and the payment~~
839 ~~of the license fee and all other applicable fees under this act,~~
840 ~~the department shall investigate each applicant and may issue~~
841 ~~the applicant a license if the department finds that the~~
842 ~~applicant:~~

843 ~~(a) Is competent and trustworthy and intends to act in~~
844 ~~good faith in the business authorized by the license applied~~
845 ~~for.~~

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

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

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

860 ~~(d) Is a corporation, a corporation incorporated under the~~
 861 ~~laws of this state, or a foreign corporation authorized to~~
 862 ~~transact business in this state.~~

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

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

869 ~~(8) An applicant for a nonresident viatical settlement~~
 870 ~~broker license must, in addition to designating the Chief~~
 871 ~~Financial Officer as agent for service of process as required by~~
 872 ~~this section, also furnish the department with the name and~~
 873 ~~address of a resident of this state upon whom notices or orders~~
 874 ~~of the department or process affecting the applicant or licensee~~
 875 ~~may be served. After issuance of the license, the licensee must~~
 876 ~~also notify the department of change of the person to receive~~
 877 ~~such notices, orders, or process; such change is not effective~~
 878 ~~until acknowledged by the department.~~

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

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

885 ~~specified in this chapter for insurance representatives~~
 886 ~~generally; however, viatical settlement brokers are not subject~~
 887 ~~to continuing education requirements.~~

888 Section 19. Section 626.99175, Florida Statutes, is
 889 created to read:

890 626.99175 Life expectancy providers; registration
 891 required; denial, suspension, revocation.--

892 (1) After July 1, 2006, a person may not perform the
 893 functions of a life expectancy provider without first having
 894 registered as a life expectancy provider, except as provided in
 895 subsection (6).

896 (2) Application for registration as a life expectancy
 897 provider must be made to the office by the applicant on a form
 898 prescribed by the office, under oath and signed by the
 899 applicant. The application must be accompanied by a fee of \$500.

900 (3) A completed application shall be evidenced on a form
 901 and in a manner prescribed by the office and shall require the
 902 registered life expectancy provider to update such information
 903 and renew such registration as required by the office.

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

906 (a) The full name, age, residence address, and business
 907 address and all occupations engaged in by the applicant during
 908 the 5 years preceding the date of the application.

909 (b) A copy of the applicant's basic organizational
 910 documents, if any, including the articles of incorporation,
 911 articles of association, partnership agreement, trust agreement,

HB 1437

2005
CS

912 or other similar documents, together with all amendments to such
 913 documents.

914 (c) Copies of all bylaws, rules, regulations, or similar
 915 documents regulating the conduct of the applicant's internal
 916 affairs.

917 (d) A list showing the name, business and residence
 918 addresses, and official position of each individual who is
 919 responsible for conduct of the applicant's affairs, including,
 920 but not limited to, any member of the board of directors, board
 921 of trustees, executive committee, or other governing board or
 922 committee and any other person or entity owning or having the
 923 right to acquire 10 percent or more of the voting securities of
 924 the applicant, and any person performing life expectancies by
 925 the applicant.

926 (e) A sworn biographical statement on forms supplied by
 927 the office with respect to each individual identified under
 928 paragraph (d), including whether such individual has been
 929 associated with any other life expectancy provider or has
 930 performed any services for a person in the business of viatical
 931 settlements.

932 (f) A sworn statement of any criminal and civil actions
 933 pending or final against the registrant or any individual
 934 identified under paragraph (d).

935 (g) A description of the policies and procedures covering
 936 all life expectancy determination criteria and protocols,
 937 including only the following:

938 1. The plan or plans of policies and procedures used to
 939 determine life expectancies.

940 2. A description of the training, including continuing
 941 training, of the individuals who determine life expectancies.

942 3. A description of how the life expectancy provider
 943 updates its manuals, underwriting guides, mortality tables and
 944 other reference works and ensures that the provider bases its
 945 determination of life expectancies on current data.

946 (h) A plan for assuring confidentiality of personal,
 947 medical, and financial information in accordance with federal
 948 and state laws.

949 (i) An anti-fraud plan as required pursuant to s.
 950 626.99278.

951 (j) A list of any agreements, contracts, or any other
 952 arrangement to provide life expectancies to a viatical
 953 settlement provider, viatical settlement broker, or any other
 954 person in the business of viatical settlements in connection
 955 with any viatical settlement contract or viatical settlement
 956 investment.

957 (5) As part of the application, and on or before March 1
 958 every 3 years thereafter, a registered life expectancy provider
 959 shall file with the office an audit of all life expectancies by
 960 the life expectancy provider for the 5 calendar years
 961 immediately preceding such audit, which audit shall be conducted
 962 and certified by a nationally recognized actuarial firm and
 963 shall only include the following:

964 (a) A mortality table.

965 (b) The number, percentage, and an actual-to-expected
 966 ratio of life expectancies in the following categories: life
 967 expectancies of less than 24 months, life expectancies of 25

HB 1437

2005
CS

968 months to 48 months, life expectancies of 49 months to 72
 969 months, life expectancies of 73 months to 108 months, life
 970 expectancies of 109 months to 144 months, life expectancies of
 971 145 months to 180 months, and life expectancies of more than 180
 972 months.

973 (6) The life expectancy provider who is a subsidiary or
 974 affiliate of an insurance company licensed in this state shall
 975 be deemed to meet the registration requirements of this section
 976 and may provide life expectancies or operate as a life
 977 expectancy provider pursuant to this act.

978 (7) No viatical settlement broker, viatical settlement
 979 provider, or insurance agent in the business of viatical
 980 settlements in this state shall directly or indirectly own or be
 981 an officer, director, or employee of a life expectancy provider.

982 (8) Each registered life expectancy provider shall provide
 983 the office, as applicable, at least 30 days' advance notice of
 984 any change in the registrants name, residence address, principal
 985 business address, or mailing address.

986 (9) A person required to be registered by this section
 987 shall for 5 years retain copies of all life expectancies and
 988 supporting documents and medical records unless those personal
 989 medical records are subject to different retention or
 990 destruction requirements of a federal or state personal health
 991 information law.

992 (10) An application for life expectancy provider
 993 registration shall be approved or denied by the commissioner
 994 within 60 calendar days following receipt of a completed
 995 application by the commissioner. The office shall notify the

HB 1437

2005
CS

996 applicant that the application is complete. A completed
 997 application that is not approved or denied in 60 calendar days
 998 following its receipt shall be deemed approved.

999 (11) The office may, in its discretion, deny the
 1000 application for a life expectancy provider registration or
 1001 suspend, revoke, or refuse to renew or continue the registration
 1002 of a life expectancy provider if the office finds:

1003 (a) Any cause for which registration could have been
 1004 refused had it then existed and been known to the office;

1005 (b) A violation of any provision of this code or of any
 1006 other law applicable to the applicant or registrant;

1007 (c) A violation of any lawful order or rule of the
 1008 department, commission, or office; or

1009 (d) The applicant or registrant:

1010 1. Has been found guilty of or pled guilty or nolo
 1011 contendere to a felony or a crime punishable by imprisonment of
 1012 1 year or more under the law of the United States of America or
 1013 of any state thereof or under the law of any other country;

1014 2. Knowingly and willfully aided, assisted, procured,
 1015 advised, or abetted any person in the violation of or to violate
 1016 a provision of the insurance code or any order or rule of the
 1017 department, commission, or office;

1018 3. Knowingly and with intent to defraud, provided a life
 1019 expectancy that does not conform to a applicant's or
 1020 registrant's general practice;

1021 4. Does not have a good business reputation or does not
 1022 have experience, training, or education that qualifies the

HB 1437

2005
CS

1023 applicant or registrant to conduct the business of a life
 1024 expectancy provider; or

1025 5. Demonstrated lack of fitness or trustworthiness to
 1026 engage in the business of issuing life expectancies.

1027 (12) The office may, in lieu of or in addition to any
 1028 suspension or revocation, assess an administrative fine not to
 1029 exceed \$2,500 for each nonwillful violation or \$10,000 for each
 1030 willful violation by a registered life expectancy provider. The
 1031 office may also place a registered life expectancy provider on
 1032 probation for a period not to exceed 2 years.

1033 (13) It is a violation of this section for a person to
 1034 represent, orally or in writing, that the fact that a life
 1035 expectancy provider is registered pursuant to this act in any
 1036 way is a recommendation or approval of the entity or that it
 1037 means the qualifications or abilities have in any way been
 1038 approved of.

1039 Section 20. Section 626.9919, Florida Statutes, is amended
 1040 to read:

1041 626.9919 Notice of change of licensee or registrant
 1042 address or name.--Each viatical settlement provider licensee and
 1043 registered life expectance provider, ~~viatical settlement broker~~
 1044 ~~licensee, and viatical settlement sales agent licensee~~ must
 1045 provide the office ~~or department, as applicable,~~ at least 30
 1046 days' advance notice of any change in the licensee's or
 1047 registrant's name, residence address, principal business
 1048 address, or mailing address.

1049 Section 21. Section 626.992, Florida Statutes, is amended
 1050 to read:

HB 1437

2005
CS

1051 626.992 Use of licensed viatical settlement providers,
1052 viatical settlement ~~licensed~~ brokers, and registered life
1053 expectancy providers, ~~and sales agents~~ required.--

1054 (1) A licensed viatical settlement provider may not use
1055 any person to perform the functions of a viatical settlement
1056 broker as defined in this act unless such person holds a
1057 current, valid life agent license and has appointed himself or
1058 herself in conformance with this chapter as a viatical
1059 ~~settlement broker. Salaried individuals employed by viatical~~
1060 ~~settlement providers shall engage in viatical settlement broker~~
1061 ~~activities only when accompanied by a viatical settlement broker~~
1062 ~~who holds a current valid license issued under this act. A~~
1063 ~~viatical settlement provider may not use any person to perform~~
1064 ~~the functions of a viatical settlement sales agent unless the~~
1065 ~~person holds a current, valid license as provided in subsection~~
1066 ~~(4).~~

1067 (2) A ~~licensed~~ viatical settlement broker may not use any
1068 person to perform the functions of a viatical settlement
1069 provider as defined in this act unless such person holds a
1070 current, valid license as a viatical settlement provider.

1071 (3) After July 1, 2006, a person ~~viatical settlement sales~~
1072 ~~agent may not operate as life expectancy provider use any person~~
1073 ~~to perform the functions of a viatical settlement broker unless~~
1074 such person is registered as a life expectancy provider pursuant
1075 to this chapter holds a current, valid license as a viatical
1076 ~~settlement broker.~~

1077 (4) After July 1, 2006, a person may not perform the
1078 ~~functions of a viatical settlement provider, viatical settlement~~

HB 1437

2005
CS

1079 broker, or any other person in the business of viatical
 1080 settlements may not obtain life expectancies from a person who
 1081 is not registered as a life expectancy provider ~~sales agent~~
 1082 ~~unless licensed as a life agent as defined in s. 626.015 and as~~
 1083 provided in this chapter.

1084 Section 22. Subsections (1) and (2) of section 626.9921,
 1085 Florida Statutes, are amended to read:

1086 626.9921 Filing of forms; required procedures; approval.--

1087 (1) A viatical settlement contract form, ~~viatical~~
 1088 ~~settlement purchase agreement form~~, escrow form, or related form
 1089 may be used in this state only after the form has been filed
 1090 with the office and only after the form has been approved by the
 1091 office.

1092 (2) The viatical settlement contract form, ~~viatical~~
 1093 ~~settlement purchase agreement form~~, escrow form, or related form
 1094 must be filed with the office at least 60 days before its use.
 1095 The form is considered approved on the 60th day after its date
 1096 of filing unless it has been previously disapproved by the
 1097 office. The office must disapprove a viatical settlement
 1098 contract form, ~~viatical settlement purchase agreement form~~,
 1099 escrow form, or related form that is unreasonable, contrary to
 1100 the public interest, discriminatory, or misleading or unfair to
 1101 the viator ~~or the purchaser~~.

1102 Section 23. Subsection (2) of section 626.9922, Florida
 1103 Statutes, is amended, and subsections (5), (6), and (7) are
 1104 added to said section, to read:

1105 626.9922 Examination.--

HB 1437

2005
CS

1106 (2) All accounts, books and records, documents, files,
 1107 contracts, and other information relating to all transactions of
 1108 viatical settlement contracts, life expectancies, or viatical
 1109 settlement purchase agreements made before July 1, 2005, must be
 1110 maintained by the licensee for a period of at least 3 years
 1111 after the death of the insured and must be available to the
 1112 office or department for inspection during reasonable business
 1113 hours.

1114 (5) The office has jurisdiction over all viatical
 1115 settlement purchase agreements made before July 1, 2005,
 1116 including, but not limited to, the authority to examine persons
 1117 in possession of records relating to viatical settlement
 1118 purchase agreements made before July 1, 2005, and that authority
 1119 set forth in s. 624.319.

1120 (6) If the office makes the determination that a viatical
 1121 settlement provider does not have the financial ability to
 1122 perform its present or future obligations under the viatical
 1123 settlement purchase agreements made before July 1, 2005, the
 1124 office shall make a referral to the United States Securities and
 1125 Exchange Commission or the Office of Financial Regulation for
 1126 further administrative action pursuant to s. 517.191, including,
 1127 but not limited to, the appointment of a receiver by the court.

1128 (7) Subsections (1), (2), (3), and (4) apply to life
 1129 expectancy providers providing life expectancies in the state
 1130 and providing life expectancies to viatical settlement providers
 1131 in the state, as if life expectancy providers were licensees.

1132 Section 24. Section 626.99245, Florida Statutes, is
 1133 amended to read:

HB 1437

2005
CS

1134 626.99245 Conflict of regulation of viaticals.--
 1135 ~~(1) A viatical settlement provider who from this state~~
 1136 ~~enters into a viatical settlement purchase agreement with a~~
 1137 ~~purchaser who is a resident of another state that has enacted~~
 1138 ~~statutes or adopted regulations governing viatical settlement~~
 1139 ~~purchase agreements, shall be governed in the effectuation of~~
 1140 ~~that viatical settlement purchase agreement by the statutes and~~
 1141 ~~regulations of the purchaser's state of residence. If the state~~
 1142 ~~in which the purchaser is a resident has not enacted statutes or~~
 1143 ~~regulations governing viatical settlement purchase agreements,~~
 1144 ~~the provider shall give the purchaser notice that neither~~
 1145 ~~Florida nor his or her state regulates the transaction upon~~
 1146 ~~which he or she is entering. For transactions in these states,~~
 1147 ~~however, the viatical settlement provider is to maintain all~~
 1148 ~~records required as if the transactions were executed in~~
 1149 ~~Florida. However, the forms used in those states need not be~~
 1150 ~~approved by the office.~~

1151 (1)(2) A viatical settlement provider who from this state
 1152 enters into a viatical settlement contract with a viator who is
 1153 a resident of another state that has enacted statutes or adopted
 1154 regulations governing viatical settlement contracts shall be
 1155 governed in the effectuation of that viatical settlement
 1156 contract by the statutes and regulations of the viator's state
 1157 of residence. If the state in which the viator is a resident has
 1158 not enacted statutes or regulations governing viatical
 1159 settlement agreements, the provider shall give the viator notice
 1160 that neither Florida nor his or her state regulates the
 1161 transaction upon which he or she is entering. For transactions

HB 1437

2005
CS

1162 in those states, however, the viatical settlement provider is to
 1163 maintain all records required as if the transactions were
 1164 executed in Florida. The forms used in those states need not be
 1165 approved by the office.

1166 (2)~~(3)~~ This section does not affect the requirement of ss.
 1167 626.9911~~(12)~~~~(5)~~ and 626.9912(1) that a viatical settlement
 1168 provider doing business from this state must obtain a viatical
 1169 settlement license from the office. As used in this subsection,
 1170 the term "doing business from this state" includes effectuating
 1171 viatical settlement contracts ~~and effectuating viatical~~
 1172 ~~settlement purchase agreements~~ from offices in this state,
 1173 regardless of the state of residence of the viator ~~or the~~
 1174 ~~viatical settlement purchaser.~~

1175 ~~(4) The offer, sale, and purchase of viatical settlement~~
 1176 ~~contracts, and the regulation of viatical settlement providers~~
 1177 ~~shall be within the exclusive jurisdiction of the Office of~~
 1178 ~~Insurance Regulation under the provisions of this part.~~

1179 Section 25. Section 626.9925, Florida Statutes, is amended
 1180 to read:

1181 626.9925 Rules.--The commission may adopt rules to
 1182 administer this act, including rules establishing standards for
 1183 evaluating advertising by licensees; rules providing for the
 1184 collection of data, for disclosures to viators ~~or purchasers,~~
 1185 and for the reporting of life expectancies and the registration
 1186 of life expectancy providers; and rules defining terms used in
 1187 this act and prescribing recordkeeping requirements relating to
 1188 executed viatical settlement contracts ~~and viatical settlement~~
 1189 ~~purchase agreements.~~

HB 1437

2005
CS

1190 Section 26. Section 626.9926, Florida Statutes, is amended
1191 to read:

1192 626.9926 Rate regulation not authorized.--Nothing in this
1193 act shall be construed to authorize the office or department to
1194 directly or indirectly regulate the amount paid as consideration
1195 for entry into a viatical settlement contract ~~or viatical~~
1196 ~~settlement purchase agreement.~~

1197 Section 27. Subsection (1) of section 626.9927, Florida
1198 Statutes, is amended to read:

1199 626.9927 Unfair trade practices; cease and desist;
1200 injunctions; civil remedy.--

1201 (1) A violation of this act is an unfair trade practice
1202 under ss. 626.9521 and 626.9541 and is subject to the penalties
1203 provided in the insurance code. Part IX ~~X~~ of this chapter
1204 applies to a licensee under this act or a transaction subject to
1205 this act as if a viatical settlement contract ~~and a viatical~~
1206 ~~settlement purchase agreement~~ were an insurance policy.

1207 Section 28. Paragraph (b) of subsection (1) of section
1208 626.99275, Florida Statutes, is amended, and paragraph (d) is
1209 added to said subsection, to read:

1210 626.99275 Prohibited practices; penalties.--

1211 (1) It is unlawful for any person:

1212 (b) Knowingly or with the intent to defraud, for the
1213 purpose of depriving another of property or for pecuniary gain,
1214 issue or use a pattern of false, misleading, or deceptive life
1215 expectancies ~~In the solicitation or sale of a viatical~~
1216 ~~settlement purchase agreement:~~

1217 ~~1. To employ any device, scheme, or artifice to defraud;~~

HB 1437

2005
CS

1218 ~~2. To obtain money or property by means of an untrue~~
 1219 ~~statement of a material fact or by any omission to state a~~
 1220 ~~material fact necessary in order to make the statements made, in~~
 1221 ~~light of the circumstances under which they were made, not~~
 1222 ~~misleading; or~~

1223 ~~3. To engage in any transaction, practice, or course of~~
 1224 ~~business which operates or would operate as a fraud or deceit~~
 1225 ~~upon a person.~~

1226 (d) Knowingly or intentionally facilitate the change of
 1227 state of residency of a viator to avoid the provisions of this
 1228 chapter.

1229 (2) A person who violates any provision of this section
 1230 commits:

1231 (a) A felony of the third degree, punishable as provided
 1232 in s. 775.082, s. 775.083, or s. 775.084, if the insurance
 1233 policy involved is valued at any amount less than \$20,000.

1234 (b) A felony of the second degree, punishable as provided
 1235 in s. 775.082, s. 775.083, or s. 775.084, if the insurance
 1236 policy involved is valued at \$20,000 or more, but less than
 1237 \$100,000.

1238 (c) A felony of the first degree, punishable as provided
 1239 in s. 775.082, s. 775.083, or s. 775.084, if the insurance
 1240 policy involved is valued at \$100,000 or more.

1241 Section 29. Section 626.99278, Florida Statutes, is
 1242 amended to read:

1243 626.99278 Viatical provider anti-fraud plan.--Every
 1244 licensed viatical settlement provider and registered life
 1245 expectancy provider ~~viatical settlement broker~~ must adopt an

HB 1437

2005
CS

1246 anti-fraud plan and file it with the Division of Insurance Fraud
1247 of the department ~~on or before December 1, 2000~~. Each anti-fraud
1248 plan shall include:

1249 (1) A description of the procedures for detecting and
1250 investigating possible fraudulent acts and procedures for
1251 resolving material inconsistencies between medical records and
1252 insurance applications. ~~;~~

1253 (2) A description of the procedures for the mandatory
1254 reporting of possible fraudulent insurance acts and prohibited
1255 practices set forth in s. 626.99275 to the Division of Insurance
1256 Fraud of the department. ~~;~~

1257 (3) A description of the plan for anti-fraud education and
1258 training of its underwriters or other personnel. ~~;~~ ~~and~~

1259 (4) A written description or chart outlining the
1260 organizational arrangement of the anti-fraud personnel who are
1261 responsible for the investigation and reporting of possible
1262 fraudulent insurance acts, and investigating unresolved material
1263 inconsistencies between medical records and insurance
1264 applications.

1265 (5) A process by which the provider will perform
1266 reasonable initial and continuing review of the accuracy of its
1267 life expectancies, whether such life expectancies are performed
1268 in house or by a contracted life expectancy provider, and ensure
1269 compliance with s. 626.99275(1) by its life expectancy
1270 providers.

1271 Section 30. Section 626.9928, Florida Statutes, is amended
1272 to read:

HB 1437

2005
CS

1273 626.9928 Acquisitions.--Acquisition of interest in a
1274 viatical settlement provider ~~or viatical settlement broker~~ is
1275 subject to s. 628.4615.

1276 Section 31. Section 626.99285, Florida Statutes, is
1277 amended to read:

1278 626.99285 Applicability of insurance code.--In addition to
1279 other applicable provisions cited in the insurance code, the
1280 office or department, as appropriate, has the authority granted
1281 under ss. 624.310, 626.901, and 626.989 to regulate viatical
1282 settlement providers, viatical settlement brokers, ~~viatical~~
1283 ~~settlement sales agents,~~ viatical settlement contracts, ~~viatical~~
1284 ~~settlement purchase agreements,~~ and viatical settlement
1285 transactions.

1286 Section 32. Section 626.99295, Florida Statutes, is
1287 amended to read:

1288 626.99295 Grace period.--Any person who was effectuating a
1289 viatical settlement purchase agreement as defined in s.
1290 626.9911(8), as such provision existed immediately prior to the
1291 effective date of this act, which viatical settlement purchase
1292 agreement was not registered pursuant to chapter 517, must
1293 proceed within 30 days after the effective date of this act to
1294 conclude all viatical settlement purchase transactions in
1295 progress, provided, if funds have not been matched with a
1296 viaticated policy, such funds, or any unmatched portion of such
1297 funds, shall be returned to the viatical settlement purchaser as
1298 defined in s. 626.9911(9), as such provision existed immediately
1299 prior to the effective date of this act, within 30 days after
1300 the effective date of this act. The provider may not solicit,

HB 1437

2005
CS

1301 negotiate, advertise, or effectuate new viatical settlement
 1302 purchase agreements after the effective date of this act. An
 1303 ~~unlicensed viatical settlement provider or viatical settlement~~
 1304 ~~broker that was legally transacting business in this state on~~
 1305 ~~June 30, 2000, may continue to transact such business, in the~~
 1306 ~~absence of any orders by the office, department, or the former~~
 1307 ~~Department of Insurance to the contrary, until the office or~~
 1308 ~~department, as applicable, approves or disapproves the viatical~~
 1309 ~~settlement provider's application for licensure if the viatical~~
 1310 ~~settlement provider or viatical settlement broker filed with the~~
 1311 ~~former department an application for licensure no later than~~
 1312 ~~August 1, 2000, and if the viatical settlement provider or~~
 1313 ~~viatical settlement broker complies with all other provisions of~~
 1314 ~~this act. Any form for which former department approval was~~
 1315 ~~required under this part must have been filed by August 1, 2000,~~
 1316 ~~and may continue to be used until disapproved by the office or~~
 1317 ~~department.~~

1318 Section 33. Sections 626.9917, 626.9918, 626.99235,
 1319 626.99236, and 626.99277, Florida Statutes, are repealed.

1320 Section 34. This act shall take effect upon becoming a
 1321 law.