

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.; providing an additional requirement for
35 viatical settlement provider license applications;
36 amending s. 626.9913, F.S.; specifying additional
37 requirements for annual statements by viatical settlement
38 provider licensees; providing an alternative bond
39 provision for certain viatical settlement providers for a
40 certain time period; prohibiting certain persons from
41 levying upon certain assets or securities under certain
42 circumstances; amending s. 626.9914, F.S.; including the
43 authority to deny a license among the adverse actions the
44 Office of Insurance Regulation may take against a viatical
45 settlement provider for certain actions; providing an
46 additional ground for the office to take adverse actions;
47 amending s. 626.9916, F.S.; revising licensure
48 requirements for viatical settlement brokers and life
49 agents; providing for self-appointment; providing for
50 transfers of appointments; providing for termination of
51 licenses; specifying a fiduciary duty of viatical
52 settlement brokers; prohibiting dividing or sharing
53 compensation received by a life agent for certain
54 activities under certain circumstances; creating s.
55 626.99175, F.S.; requiring registration to operate as a
56 life expectancy provider; providing registration for

57 requirements; requiring certain application information;
58 requiring registered life expectancy providers to
59 periodically file audits with the office; providing audit
60 requirements; authorizing certain subsidiaries of life
61 expectancy providers to operate as a provider under
62 certain circumstances; prohibiting certain providers,
63 brokers, and agents from owning or being an officer,
64 director, or employee of a life expectancy provider;
65 requiring providers to provide the office with advance
66 notice of certain changes; requiring providers to retain
67 copies of certain information and documents; providing an
68 exception; providing procedures for approval or denial of
69 applications; specifying grounds for denial of an
70 application; authorizing the office to assess
71 administrative fines under certain circumstances;
72 authorizing the office to place a provider on probation
73 for a certain period; specifying certain activities
74 violations; amending ss. 626.9919, 626.992, and 626.9921,
75 F.S., to conform; amending s. 626.9922, F.S.; specifying
76 office jurisdiction over certain viatical settlement
77 purchase agreements; authorizing the office to refer
78 certain cases to the United States Securities and Exchange
79 Commission for administrative action under certain
80 circumstances; providing application to life expectancy
81 providers; amending ss. 626.99245, 626.9925, 626.9926, and
82 626.9927, F.S., to conform; amending s. 626.99275, F.S.;
83 revising prohibited practices to apply to issuing life
84 expectancies and change a viator's residency for certain

85 | purposes; providing a criminal penalty; amending s.
86 | 626.99278, F.S.; providing for application to registered
87 | life expectancy providers; requiring an anti-fraud plan to
88 | include a description of procedures used to perform life
89 | expectancy accuracy reviews; amending ss. 626.9928 and
90 | 626.99285, F.S., to conform; amending s. 626.99295, F.S.;
91 | revising application of a grace period for certain
92 | viatical settlement purchase agreements; repealing s.
93 | 626.9917, F.S., relating to denial, suspension,
94 | revocation, or nonrenewal of viatical settlement broker
95 | licenses; repealing s. 626.9918, F.S., relating to effect
96 | of suspension or revocation of viatical settlement broker
97 | licenses; repealing s. 626.99235, F.S., relating to
98 | disclosures to viatical settlement purchasers; repealing
99 | s. 626.99236, F.S., relating to further disclosures to
100 | viatical settlement purchasers; repealing s. 626.99277,
101 | F.S., relating to false representations; providing an
102 | effective date.

103 |
104 | Be It Enacted by the Legislature of the State of Florida:

105 |
106 | Section 1. Subsections (19) and (21) of section 517.021,
107 | Florida Statutes, are renumbered as subsections (20) and (22),
108 | respectively, present subsection (20) is renumbered as
109 | subsection (21) and amended, and subsections (19) and (23) are
110 | added to said section, to read:

111 517.021 Definitions.--When used in this chapter, unless
 112 the context otherwise indicates, the following terms have the
 113 following respective meanings:

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

120 ~~(21)~~~~(20)~~ "Security" includes any of the following:

- 121 (a) A note.
- 122 (b) A stock.
- 123 (c) A treasury stock.
- 124 (d) A bond.
- 125 (e) A debenture.
- 126 (f) An evidence of indebtedness.
- 127 (g) A certificate of deposit.
- 128 (h) A certificate of deposit for a security.
- 129 (i) A certificate of interest or participation.
- 130 (j) A whiskey warehouse receipt or other commodity
 131 warehouse receipt.
- 132 (k) A certificate of interest in a profit-sharing
 133 agreement or the right to participate therein.
- 134 (l) A certificate of interest in an oil, gas, petroleum,
 135 mineral, or mining title or lease or the right to participate
 136 therein.
- 137 (m) A collateral trust certificate.
- 138 (n) A reorganization certificate.

- 139 (o) A preorganization subscription.
- 140 (p) Any transferable share.
- 141 (q) An investment contract.
- 142 (r) A beneficial interest in title to property, profits,
- 143 or earnings.
- 144 (s) An interest in or under a profit-sharing or
- 145 participation agreement or scheme.
- 146 (t) Any option contract which entitles the holder to
- 147 purchase or sell a given amount of the underlying security at a
- 148 fixed price within a specified period of time.
- 149 (u) Any other instrument commonly known as a security,
- 150 including an interim or temporary bond, debenture, note, or
- 151 certificate.
- 152 (v) Any receipt for a security, or for subscription to a
- 153 security, or any right to subscribe to or purchase any security.
- 154 (w) A viatical settlement investment.
- 155 (23) "Viatical settlement investment" means an agreement
- 156 for the purchase, sale, assignment, transfer, devise, or bequest
- 157 of all or any portion of a legal or equitable interest in a
- 158 viaticated policy as defined in chapter 626. The term does not
- 159 include:
- 160 (a) The transfer or assignment of an interest in a
- 161 previously viaticated policy from a natural person who transfers
- 162 or assigns no more than one such interest in 1 calendar year.
- 163 (b) The provision of stop-loss coverage to a viatical
- 164 settlement provider, financing entity, or related provider
- 165 trust, as those terms are defined in s. 626.9911, by an
- 166 authorized or eligible insurer.

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

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

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

190 Section 2. Section 517.072, Florida Statutes, is created
191 to read:

192 517.072 Viatical settlement investments.--The exemptions
193 provided for by ss. 517.051(6), (8), and (10) do not apply to a
194 viatical settlement investment. The offering of a viatical

195 settlement investment is not an exempt transaction under s.
196 517.061(2), (3), (8), (11), and (18), regardless of whether the
197 offering otherwise complies with the conditions of that section,
198 unless such offering is to a qualified institutional buyer.

199 Section 3. Subsection (7) of section 517.081, Florida
200 Statutes, is amended, and subsection (8) is added to said
201 section, to read:

202 517.081 Registration procedure.--

203 (7) If upon examination of any application the office
204 shall find that the sale of the security referred to therein
205 would not be fraudulent and would not work or tend to work a
206 fraud upon the purchaser, that the terms of the sale of such
207 securities would be fair, just, and equitable, and that the
208 enterprise or business of the issuer is not based upon unsound
209 business principles, it shall record the registration of such
210 security in the register of securities; and thereupon such
211 security so registered may be sold by any registered dealer,
212 subject, however, to the further order of the office. In order
213 to determine if an offering is fair, just, and equitable, the
214 commission may by rule establish requirements and standards for
215 the filing, content, and circulation of any preliminary, final,
216 or amended prospectus and other sales literature and may by rule
217 establish merit qualification criteria relating to the issuance
218 of equity securities, debt securities, insurance company
219 securities, real estate investment trusts (REITs), and other
220 traditional and nontraditional investments, including, but not
221 limited to, oil and gas investments. The criteria may include
222 such elements as the promoter's equity investment ratio, the

223 financial condition of the issuer, the voting rights of
224 shareholders, the grant of options or warrants to underwriters
225 and others, loans and other affiliated transaction, the use or
226 refund of proceeds of the offering, and such other relevant
227 criteria as the office in its judgment may deem necessary to
228 such determination.

229 (8) The commission may by rule establish requirements and
230 standards for:

231 (a) Disclosures to purchasers of viatical settlement
232 investments.

233 (b) Recordkeeping requirements for sellers of viatical
234 settlement investments.

235 Section 4. Section 517.1215, Florida Statutes, is created
236 to read:

237 517.1215 Requirements, rules of conduct, and prohibited
238 business practices for investment advisors and their associated
239 persons.--

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

243 (a) Notification of custody of, maintenance of, and
244 safeguards for client funds.

245 (b) Communications with clients and independent
246 representatives.

247 (c) Requirements for investment advisers who have custody
248 of pooled investments.

249 (d) Exceptions to the custody requirements.

250

251 In adopting the rules, the commission shall consider the rules
252 and regulations of the federal regulatory authority and the
253 North American Securities Administrators Association.

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

264 Section 5. Section 517.1217, Florida Statutes, is created
265 to read:

266 517.1217 Prohibited business practices and rules of
267 conduct for dealers and their associated persons.--The
268 commission by rule may establish rules of conduct and prohibited
269 business practices for dealers and their associated persons. In
270 adopting the rules, the commission shall consider general
271 industry standards as expressed in the rules and regulations of
272 the various federal and self-regulatory agencies and regulatory
273 associations, including, but not limited to, the United States
274 Securities and Exchange Commission, the National Association of
275 Securities Dealers, the stock exchanges, and the North American
276 Securities Administrators Association.

277 Section 6. Paragraph (a) of subsection (7) of section
278 624.501, Florida Statutes, is amended to read:

279 | 624.501 Filing, license, appointment, and miscellaneous
 280 | fees.--The department, commission, or office, as appropriate,
 281 | shall collect in advance, and persons so served shall pay to it
 282 | in advance, fees, licenses, and miscellaneous charges as
 283 | follows:

284 | (7) Life insurance agents.

285 | (a) Agent's original appointment and biennial renewal or
 286 | continuation thereof, each insurer or agent making an
 287 | appointment:

288 Appointment fee.....	\$42.00
289 State tax.....	12.00
290 County tax.....	6.00
291 Total.....	\$60.00

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

294 | 626.015 Definitions.--As used in this part:

295 | (10) "Life agent" means an individual representing an
 296 | insurer as to life insurance and annuity contracts, or acting as
 297 | a viatical settlement broker as defined in s. 626.9911,
 298 | including agents appointed to transact life insurance, fixed-
 299 | dollar annuity contracts, or variable contracts by the same
 300 | insurer.

301 | Section 8. Paragraph (b) of subsection (1) of section
 302 | 626.112, Florida Statutes, is amended to read:

303 | 626.112 License and appointment required; agents, customer
 304 | representatives, adjusters, insurance agencies, service
 305 | representatives, managing general agents.--

306 | (1)

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

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

319 2. Distributing an invitation to contract to prospective
 320 purchasers;

321 3. Making general or specific recommendations as to
 322 insurance products;

323 4. Completing orders or applications for insurance
 324 products; ~~or~~

325 5. Comparing insurance products, advising as to insurance
 326 matters, or interpreting policies or coverages; or

327 6. Offering or attempting to negotiate on behalf of
 328 another person a viatical settlement contract as defined in s.
 329 626.9911.

330
 331 However, an employee leasing company licensed pursuant to
 332 chapter 468 which is seeking to enter into a contract with an
 333 employer that identifies products and services offered to
 334 employees may deliver proposals for the purchase of employee

335 leasing services to prospective clients of the employee leasing
336 company setting forth the terms and conditions of doing
337 business; classify employees as permitted by s. 468.529; collect
338 information from prospective clients and other sources as
339 necessary to perform due diligence on the prospective client and
340 to prepare a proposal for services; provide and receive
341 enrollment forms, plans, and other documents; and discuss or
342 explain in general terms the conditions, limitations, options,
343 or exclusions of insurance benefit plans available to the client
344 or employees of the employee leasing company were the client to
345 contract with the employee leasing company. Any advertising
346 materials or other documents describing specific insurance
347 coverages must identify and be from a licensed insurer or its
348 licensed agent or a licensed and appointed agent employed by the
349 employee leasing company. The employee leasing company may not
350 advise or inform the prospective business client or individual
351 employees of specific coverage provisions, exclusions, or
352 limitations of particular plans. As to clients for which the
353 employee leasing company is providing services pursuant to s.
354 468.525(4), the employee leasing company may engage in
355 activities permitted by ss. 626.7315, 626.7845, and 626.8305,
356 subject to the restrictions specified in those sections. If a
357 prospective client requests more specific information concerning
358 the insurance provided by the employee leasing company, the
359 employee leasing company must refer the prospective business
360 client to the insurer or its licensed agent or to a licensed and
361 appointed agent employed by the employee leasing company.

362 Section 9. Section 626.207, Florida Statutes, is amended
 363 to read:

364 626.207 Department rulemaking authority; waiting periods
 365 for applicants; penalties against licensees.--

366 (1) The department shall adopt rules establishing specific
 367 waiting periods for applicants to become eligible for licensure
 368 following denial, suspension, or revocation pursuant to s.
 369 626.611, s. 626.621, s. 626.8437, s. 626.844, s. 626.935, ~~s.~~
 370 ~~626.9917~~, s. 634.181, s. 634.191, s. 634.320, s. 634.321, s.
 371 634.422, s. 634.423, s. 642.041, or s. 642.043. The purpose of
 372 the waiting periods is to provide sufficient time to demonstrate
 373 reformation of character and rehabilitation. The waiting periods
 374 shall vary based on the type of conduct and the length of time
 375 since the conduct occurred and shall also be based on the
 376 probability that the propensity to commit illegal conduct has
 377 been overcome. The waiting periods may be adjusted based on
 378 aggravating and mitigating factors established by rule and
 379 consistent with this purpose.

380 (2) The department shall adopt rules establishing specific
 381 penalties against licensees for violations of s. 626.611, s.
 382 626.621, s. 626.8437, s. 626.844, s. 626.935, ~~s. 626.9917~~, s.
 383 634.181, s. 634.191, s. 634.320, s. 634.321, s. 634.422, s.
 384 634.423, s. 642.041, or s. 642.043. The purpose of the
 385 revocation or suspension is to provide a sufficient penalty to
 386 deter future violations of the Florida Insurance Code. The
 387 imposition of a revocation or the length of suspension shall be
 388 based on the type of conduct and the probability that the
 389 propensity to commit further illegal conduct has been overcome

390 at the time of eligibility for relicensure. The revocation or
 391 the length of suspension may be adjusted based on aggravating or
 392 mitigating factors, established by rule and consistent with this
 393 purpose.

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

396 626.331 Number of appointments permitted or required.--

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

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

403 626.611 Grounds for compulsory refusal, suspension, or
 404 revocation of agent's, title agency's, adjuster's, customer
 405 representative's, service representative's, or managing general
 406 agent's license or appointment.--The department shall deny an
 407 application for, suspend, revoke, or refuse to renew or continue
 408 the license or appointment of any applicant, agent, title
 409 agency, adjuster, customer representative, service
 410 representative, or managing general agent, and it shall suspend
 411 or revoke the eligibility to hold a license or appointment of
 412 any such person, if it finds that as to the applicant, licensee,
 413 or appointee any one or more of the following applicable grounds
 414 exist:

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

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

418 (b) No longer meeting the requirements for initial
 419 licensure.

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

426 (d) Dealing in bad faith with viators.

427 Section 12. Section 626.777, Florida Statutes, is amended
 428 to read:

429 626.777 Scope of this part.--This part applies only to
 430 agents of life insurers, ~~and to~~ agents who are appointed by the
 431 same insurer as to both life insurance and health insurance, and
 432 agents who perform the functions of a viatical settlement broker
 433 as defined in s. 626.9911.

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

436 626.7845 Prohibition against unlicensed transaction of
 437 life insurance.--

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

441 (a) Solicit insurance or annuities or procure
 442 applications; ~~or~~

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

446 opinions to persons relative to insurance or insurance contracts
 447 other than:

- 448 1. As a consulting actuary advising an insurer; or
- 449 2. As to the counseling and advising of labor unions,
- 450 associations, trustees, employers, or other business entities,
- 451 the subsidiaries and affiliates of each, relative to their
- 452 interests and those of their members or employees under
- 453 insurance benefit plans; or

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

457 Section 14. Section 626.9911, Florida Statutes, is amended
 458 to read:

459 626.9911 Definitions.--As used in this act, the term:

460 (1) ~~(14)~~ "Financing entity" means an underwriter, placement
 461 agent, lender, purchaser of securities, or purchaser of a policy
 462 or certificate from a viatical settlement provider, credit
 463 enhancer, or any entity that has direct ownership in a policy or
 464 certificate that is the subject of a viatical settlement
 465 contract, but whose principal activity related to the
 466 transaction is providing funds or credit enhancement to effect
 467 the viatical settlement or the purchase of one or more
 468 viaticated ~~viatical~~ policies and who has an agreement in writing
 469 with one or more licensed viatical settlement providers to
 470 finance the acquisition of viatical settlement contracts. The
 471 term does not include a nonaccredited investor, ~~a viatical~~
 472 ~~settlement purchaser,~~ or other natural person. A financing
 473 entity may not enter into a viatical settlement contract.

474 (2)~~(1)~~ "Independent third-party trustee or escrow agent"
475 means an attorney, certified public accountant, financial
476 institution, or other person providing escrow services under the
477 authority of a regulatory body. The term does not include any
478 person associated, affiliated, or under common control with a
479 viatical settlement provider or viatical settlement broker.

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

483 (4) "Life expectancy provider" means a person who
484 determines, or holds himself or herself out as determining, life
485 expectancies or mortality ratings used to determine life
486 expectancies:

487 (a) On behalf of a viatical settlement provider, viatical
488 settlement broker, life agent, or a person engaged in the
489 business of viatical settlements;

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

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

494 (5)~~(2)~~ "Person" has the meaning specified in s. 1.01.

495 (6)~~(12)~~ "Related form" means any form, created by or on
496 behalf of a licensee, which a viator ~~or viatical settlement~~
497 ~~purchaser~~ is required to sign or initial. The forms include, but
498 are not limited to, a power of attorney, a release of medical
499 information form, a suitability questionnaire, a disclosure
500 document, or any addendum, schedule, or amendment to a viatical
501 settlement contract ~~or viatical settlement purchase agreement~~

502 considered necessary by a provider to effectuate a viatical
503 settlement transaction.

504 (7) "Related provider trust" means a titling trust or
505 other trust established by a licensed viatical settlement
506 provider or financing entity for the sole purpose of holding the
507 ownership or beneficial interest in purchased policies in
508 connection with a financing transaction. The trust must have a
509 written agreement with a licensed viatical settlement provider
510 or financing entity under which the licensed viatical settlement
511 provider or financing entity is responsible for insuring
512 compliance with all statutory and regulatory requirements and
513 under which the trust agrees to make all records and files
514 relating to viatical settlement transactions available to the
515 office as if those records and files were maintained directly by
516 the licensed viatical settlement provider. This term does not
517 include an independent third-party trustee or escrow agent or a
518 trust that does not enter into agreements with a viator. A
519 related provider trust shall be subject to all provisions of
520 this act that apply to the viatical settlement provider who
521 established the related provider trust, except s. 626.9912,
522 which shall not be applicable. A viatical settlement provider
523 may establish no more than one related provider trust, and the
524 sole trustee of such related provider trust shall be the
525 viatical settlement provider licensed under s. 626.9912. The
526 name of the licensed viatical settlement provider shall be
527 included within the name of the related provider trust.

528 (8) ~~(13)~~ "Special purpose entity" means an entity
529 established by a licensed viatical settlement provider or by a

530 financing entity, which may be a corporation, partnership,
531 trust, limited liability company, or other similar entity formed
532 solely to provide, either directly or indirectly, access to
533 institutional capital markets to a viatical settlement provider
534 or financing entity. A special purpose entity may not obtain
535 capital from any natural person or entity with less than \$50
536 million in assets and shall not enter into a viatical settlement
537 contract or a viatical settlement purchase agreement.

538 (9)(3) "Viatical settlement broker" means a person who, on
539 behalf of a viator and for a fee, commission, or other valuable
540 consideration, offers or attempts to negotiate viatical
541 settlement contracts between a viator resident in this state and
542 one or more viatical settlement providers. Notwithstanding the
543 manner in which the viatical settlement broker is compensated, a
544 viatical settlement broker is deemed to represent only the
545 viator and owes a fiduciary duty to the viator to act according
546 to the viator's instructions and in the best interest of the
547 viator. The term does not include an attorney, licensed
548 Certified Public Accountant, or investment adviser lawfully
549 registered under chapter 517, who is retained to represent the
550 viator and whose compensation is paid directly by or at the
551 direction and on behalf of the viator.

552 (10)(4) "Viatical settlement contract" means a written
553 agreement entered into between a viatical settlement provider,
554 or its related provider trust, and a viator. The viatical
555 settlement contract includes an agreement to transfer ownership
556 or change the beneficiary designation of a life insurance policy
557 at a later date, regardless of the date that compensation is

558 | paid to the viator. The agreement must establish the terms under
 559 | which the viatical settlement provider will pay compensation or
 560 | anything of value, which compensation or value is less than the
 561 | expected death benefit of the insurance policy or certificate,
 562 | in return for the viator's assignment, transfer, sale, devise,
 563 | or bequest of the death benefit or ownership of all or a portion
 564 | of the insurance policy or certificate of insurance to the
 565 | viatical settlement provider. A viatical settlement contract
 566 | also includes a contract for a loan or other financial
 567 | transaction secured primarily by an individual or group life
 568 | insurance policy, other than a loan by a life insurance company
 569 | pursuant to the terms of the life insurance contract, or a loan
 570 | secured by the cash value of a policy.

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

573 | (12)-(5)- "Viatical settlement provider" means a person who,
 574 | in this state, from this state, or with a resident of this
 575 | state, effectuates a viatical settlement contract. The term does
 576 | not include:

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

581 | (b) A life and health insurer that has lawfully issued a
 582 | life insurance policy that provides accelerated benefits to
 583 | terminally ill policyholders or certificateholders.

584 | (c) Any natural person who enters into no more than one
 585 | viatical settlement contract with a viator in 1 calendar year,

586 unless such natural person has previously been licensed under
 587 this act or is currently licensed under this act.

588 (d) A trust that meets the definition of a "related
 589 provider trust."

590 (e) A viator in this state.

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

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

593 (13)~~(11)~~ "Viaticated policy" means a life insurance
 594 policy, or a certificate under a group policy, which is the
 595 subject of a viatical settlement contract.

596 (14)~~(6)~~ "Viator" means the owner of a life insurance
 597 policy or a certificateholder under a group policy, which policy
 598 is not a previously viaticated policy, who enters or seeks to
 599 enter into a viatical settlement contract. This term does not
 600 include a ~~viatical settlement purchaser or a~~ viatical settlement
 601 provider or any person acquiring a policy or interest in a
 602 policy from a viatical settlement provider, nor does it include
 603 an independent third-party trustee or escrow agent.

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

612 ~~(9) "Viatical settlement purchaser" means a person who~~
 613 ~~gives a sum of money as consideration for a life insurance~~

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

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

639 Section 15. Paragraph (f) of subsection (3) and subsection
640 (4) of section 626.9912, Florida Statutes, are amended,
641 paragraph (g) of subsection (3) of said section is redesignated

642 as paragraph (h), and new paragraph (g) is added to said
643 subsection, to read:

644 626.9912 Viatical settlement provider license required;
645 application for license.--

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

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

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

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

666 Section 16. Section 626.9913, Florida Statutes, is amended
667 to read:

668 626.9913 Viatical settlement provider license continuance;
669 annual report; fees; deposit.--

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

672 (2) Annually, on or before March 1, the viatical
673 settlement provider licensee shall file a statement containing
674 information the commission requires and shall pay to the office
675 a license fee in the amount of \$500. The annual statement shall
676 include audited financial statements prepared in accordance with
677 generally accepted accounting principles by an independent
678 certified public accountant as of the last day of the preceding
679 calendar year. However, if the audited financial statement has
680 not been completed, the licensee shall include in its annual
681 statement an unaudited financial statement and an affidavit from
682 an officer of the licensee stating that the audit has not been
683 completed. In this event, the licensee shall submit the audited
684 statement on or before June 1. The annual statement shall also
685 provide the office with a report of all life expectancy
686 providers who have provided life expectancies, directly or
687 indirectly, to the viatical settlement provider for use in
688 connection with a viatical settlement contract or a viatical
689 settlement investment. A viatical settlement provider shall
690 include in all statements filed with the office all information
691 requested by the office regarding a related provider trust
692 established by the viatical settlement provider. The office may
693 require more frequent reporting. Failure to timely file the
694 annual statement or to timely pay the license fee is grounds for
695 immediate suspension of the license.

696 (3) To ensure the faithful performance of its obligations
697 to its viators in the event of insolvency or the loss of its

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

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

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

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

721 626.9914 Suspension, revocation, or nonrenewal of viatical
 722 settlement provider license; grounds; administrative fine.--

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

- 726 (a) Has made a misrepresentation in the application for
 727 the license;
- 728 (b) Has engaged in fraudulent or dishonest practices, or
 729 otherwise has been shown to be untrustworthy or incompetent to
 730 act as a viatical settlement provider;
- 731 (c) Demonstrates a pattern of unreasonable payments to
 732 viators;
- 733 (d) Has been found guilty of, or has pleaded guilty or
 734 nolo contendere to, any felony, or a misdemeanor involving fraud
 735 or moral turpitude, regardless of whether a judgment of
 736 conviction has been entered by the court;
- 737 (e) Has issued viatical settlement contracts that have not
 738 been approved pursuant to this act;
- 739 (f) Has failed to honor contractual obligations related to
 740 the business of viatical settlement contracts;
- 741 (g) Deals in bad faith with viators;
- 742 (h) Has violated any provision of the insurance code or of
 743 this act;
- 744 (i) Employs any person who materially influences the
 745 licensee's conduct and who fails to meet the requirements of
 746 this act; ~~or~~
- 747 (j) No longer meets the requirements for initial
 748 licensure; or
- 749 (k) Obtains or uses life expectancies from life expectancy
 750 providers who are not registered with the office pursuant to
 751 this act.

752 Section 18. Section 626.9916, Florida Statutes, is amended
 753 to read:

754 626.9916 Viatical settlement broker and life agent license
755 required; ~~application for license.~~--

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

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

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

777 (a) ~~The applicant's full name, age, residence address, and~~
778 ~~business address, and all occupations engaged in by the~~
779 ~~applicant during the 5 years preceding the date of the~~
780 ~~application; if the applicant is not a natural person, the~~

781 ~~applicant must provide the information required by this~~
782 ~~paragraph with respect to all officers, directors, or partners.~~

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

788 ~~(c) If the applicant is not a natural person, a list~~
789 ~~showing the name, business and residence addresses, and official~~
790 ~~position of each individual who is responsible for conduct of~~
791 ~~the applicant's affairs, including, but not limited to, any~~
792 ~~member of the applicant's board of directors, board of trustees,~~
793 ~~executive committee, or other governing board or committee and~~
794 ~~any other person or entity owning or having the right to acquire~~
795 ~~10 percent or more of the voting securities of the applicant.~~

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

798 ~~1. A sworn biographical statement on forms supplied by the~~
799 ~~department.~~

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

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

806 ~~(e) Such other information as the department deems~~
807 ~~necessary to determine that the individual applicant and the~~
808 ~~individuals identified under paragraph (c) are competent and~~

809 ~~trustworthy and can lawfully and successfully act as a viatical~~
 810 ~~settlement provider.~~

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

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

833 (6) The compensation received by a life agent for
 834 activities performed as a viatical settlement broker may not be
 835 divided or shared with another person unless such other person
 836 is a life agent licensed under this chapter and appointed as

837 provided in this part. ~~The department may specify the form of~~
838 ~~the license and may require photographing of the applicant as~~
839 ~~part of the application process.~~

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

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

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

851 ~~(c) Except with respect to applicants for nonresident~~
852 ~~licenses, is a bona fide resident of this state and actually~~
853 ~~resides in this state at least 180 days a year. If an applicant~~
854 ~~holds a similar license or an insurance agent's or broker's~~
855 ~~license in another state at the time of applying for a license~~
856 ~~under this section, the applicant may be found to meet the~~
857 ~~residency requirement of this paragraph only after he or she~~
858 ~~furnishes a letter of clearance satisfactory to the department~~
859 ~~or other proof that the applicant's resident licenses have been~~
860 ~~eanceled or changed to nonresident status and that the applicant~~
861 ~~is in good standing with the licensing authority.~~

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

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

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

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

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

884 ~~(10) Except as otherwise provided in this section,~~
885 ~~viatical settlement brokers shall be licensed, appointed,~~
886 ~~renewed, continued, reinstated, and terminated in the manner~~
887 ~~specified in this chapter for insurance representatives~~
888 ~~generally; however, viatical settlement brokers are not subject~~
889 ~~to continuing education requirements.~~

890 Section 19. Section 626.99175, Florida Statutes, is
891 created to read:

892 626.99175 Life expectancy providers; registration
893 required; denial, suspension, revocation.--

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

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

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

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

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

911 (b) A copy of the applicant's basic organizational
912 documents, if any, including the articles of incorporation,
913 articles of association, partnership agreement, trust agreement,
914 or other similar documents, together with all amendments to such
915 documents.

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

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

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

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

937 (g) A general description of the policies and procedures
 938 covering all life expectancy determinations criteria and
 939 protocols, including only the following:

940 1. The plan or plans of policies and procedures used to
 941 determine life expectancies.

942 2. A description of the training, including continuing
 943 training, of the individuals who determine life expectancies.

944 3. A description of how the life expectancy provider
 945 updates its manuals, underwriting guides, mortality tables and

946 other reference works and ensures that the provider bases its
 947 determination of life expectancies on current data.

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

951 (i) An anti-fraud plan as required pursuant to s.
 952 626.99278.

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

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

966 (a) A mortality table.

967 (b) The number, percentage, and an actual-to-expected
 968 ratio of life expectancies in the following categories: life
 969 expectancies of less than 24 months, life expectancies of 25
 970 months to 48 months, life expectancies of 49 months to 72
 971 months, life expectancies of 73 months to 108 months, life
 972 expectancies of 109 months to 144 months, life expectancies of

973 145 months to 180 months, and life expectancies of more than 180
974 months.

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

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

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

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

994 (10) An application for life expectancy provider
995 registration shall be approved or denied by the commissioner
996 within 60 calendar days following receipt of a completed
997 application by the commissioner. The office shall notify the
998 applicant that the application is complete. A completed
999 application that is not approved or denied in 60 calendar days
1000 following its receipt shall be deemed approved.

1001 (11) The office may, in its discretion, deny the
 1002 application for a life expectancy provider registration or
 1003 suspend, revoke, or refuse to renew or continue the registration
 1004 of a life expectancy provider if the office finds:

1005 (a) Any cause for which registration could have been
 1006 refused had it then existed and been known to the office;

1007 (b) A violation of any provision of this code or of any
 1008 other law applicable to the applicant or registrant;

1009 (c) A violation of any lawful order or rule of the
 1010 department, commission, or office; or

1011 (d) The applicant or registrant:

1012 1. Has been found guilty of or pled guilty or nolo
 1013 contendere to a felony or a crime punishable by imprisonment of
 1014 1 year or more under the law of the United States of America or
 1015 of any state thereof or under the law of any other country;

1016 2. Knowingly and willfully aided, assisted, procured,
 1017 advised, or abetted any person in the violation of or to violate
 1018 a provision of the insurance code or any order or rule of the
 1019 department, commission, or office;

1020 3. Knowingly and with intent to defraud, provided a life
 1021 expectancy that does not conform to a applicant's or
 1022 registrant's general practice;

1023 4. Does not have a good business reputation or does not
 1024 have experience, training, or education that qualifies the
 1025 applicant or registrant to conduct the business of a life
 1026 expectancy provider; or

1027 5. Demonstrated lack of fitness or trustworthiness to
 1028 engage in the business of issuing life expectancies.

1029 (12) The office may, in lieu of or in addition to any
 1030 suspension or revocation, assess an administrative fine not to
 1031 exceed \$2,500 for each nonwillful violation or \$10,000 for each
 1032 willful violation by a registered life expectancy provider. The
 1033 office may also place a registered life expectancy provider on
 1034 probation for a period not to exceed 2 years.

1035 (13) It is a violation of this section for a person to
 1036 represent, orally or in writing, that the fact that a life
 1037 expectancy provider is registered pursuant to this act in any
 1038 way is a recommendation or approval of the entity or that it
 1039 means the qualifications or abilities have in any way been
 1040 approved of.

1041 Section 20. Section 626.9919, Florida Statutes, is amended
 1042 to read:

1043 626.9919 Notice of change of licensee or registrant
 1044 address or name.--Each viatical settlement provider licensee and
 1045 registered life expectance provider, ~~viatical settlement broker~~
 1046 ~~licensee, and viatical settlement sales agent licensee~~ must
 1047 provide the office ~~or department, as applicable,~~ at least 30
 1048 days' advance notice of any change in the licensee's or
 1049 registrant's name, residence address, principal business
 1050 address, or mailing address.

1051 Section 21. Section 626.992, Florida Statutes, is amended
 1052 to read:

1053 626.992 Use of licensed viatical settlement providers,
 1054 ~~viatical settlement licensed brokers,~~ and registered life
 1055 expectancy providers, ~~and sales agents~~ required.--

1056 (1) A licensed viatical settlement provider may not use
 1057 any person to perform the functions of a viatical settlement
 1058 broker as defined in this act unless such person holds a
 1059 current, valid life agent license and has appointed himself or
 1060 herself in conformance with this chapter ~~as a viatical~~
 1061 ~~settlement broker. Salaried individuals employed by viatical~~
 1062 ~~settlement providers shall engage in viatical settlement broker~~
 1063 ~~activities only when accompanied by a viatical settlement broker~~
 1064 ~~who holds a current valid license issued under this act. A~~
 1065 ~~viatical settlement provider may not use any person to perform~~
 1066 ~~the functions of a viatical settlement sales agent unless the~~
 1067 ~~person holds a current, valid license as provided in subsection~~
 1068 ~~(4).~~

1069 (2) A ~~licensed~~ viatical settlement broker may not use any
 1070 person to perform the functions of a viatical settlement
 1071 provider as defined in this act unless such person holds a
 1072 current, valid license as a viatical settlement provider.

1073 (3) After July 1, 2006, a person ~~viatical settlement sales~~
 1074 ~~agent may not operate as life expectancy provider use any person~~
 1075 ~~to perform the functions of a viatical settlement broker unless~~
 1076 such person is registered as a life expectancy provider pursuant
 1077 to this chapter ~~holds a current, valid license as a viatical~~
 1078 ~~settlement broker.~~

1079 (4) After July 1, 2006, a person may not perform the
 1080 ~~functions of a viatical settlement~~ provider, viatical settlement
 1081 broker, or any other person in the business of viatical
 1082 settlements may not obtain life expectancies from a person who
 1083 is not registered as a life expectancy provider ~~sales agent~~

1084 ~~unless licensed as a life agent as defined in s. 626.015 and as~~
 1085 provided in this chapter.

1086 Section 22. Subsections (1) and (2) of section 626.9921,
 1087 Florida Statutes, are amended to read:

1088 626.9921 Filing of forms; required procedures; approval.--

1089 (1) A viatical settlement contract form, ~~viatical~~
 1090 ~~settlement purchase agreement form,~~ escrow form, or related form
 1091 may be used in this state only after the form has been filed
 1092 with the office and only after the form has been approved by the
 1093 office.

1094 (2) The viatical settlement contract form, ~~viatical~~
 1095 ~~settlement purchase agreement form,~~ escrow form, or related form
 1096 must be filed with the office at least 60 days before its use.
 1097 The form is considered approved on the 60th day after its date
 1098 of filing unless it has been previously disapproved by the
 1099 office. The office must disapprove a viatical settlement
 1100 contract form, ~~viatical settlement purchase agreement form,~~
 1101 escrow form, or related form that is unreasonable, contrary to
 1102 the public interest, discriminatory, or misleading or unfair to
 1103 the viator ~~or the purchaser.~~

1104 Section 23. Subsection (2) of section 626.9922, Florida
 1105 Statutes, is amended, and subsections (5), (6), and (7) are
 1106 added to said section, to read:

1107 626.9922 Examination.--

1108 (2) All accounts, books and records, documents, files,
 1109 contracts, and other information relating to all transactions of
 1110 viatical settlement contracts, life expectancies, or viatical
 1111 settlement purchase agreements made before July 1, 2005, must be

1112 maintained by the licensee for a period of at least 3 years
 1113 after the death of the insured and must be available to the
 1114 office or department for inspection during reasonable business
 1115 hours.

1116 (5) The office has jurisdiction over all viatical
 1117 settlement purchase agreements made before July 1, 2005,
 1118 including, but not limited to, the authority to examine persons
 1119 in possession of records relating to viatical settlement
 1120 purchase agreements made before July 1, 2005, and that authority
 1121 set forth in s. 624.319.

1122 (6) If the office makes the determination that a viatical
 1123 settlement provider does not have the financial ability to
 1124 perform its present or future obligations under the viatical
 1125 settlement purchase agreements made before July 1, 2005, the
 1126 office shall make a referral to the United States Securities and
 1127 Exchange Commission or the Office of Financial Regulation for
 1128 further administrative action pursuant to s. 517.191, including,
 1129 but not limited to, the appointment of a receiver by the court.

1130 (7) Subsections (1), (2), (3), and (4) apply to life
 1131 expectancy providers providing life expectancies in the state
 1132 and providing life expectancies to viatical settlement providers
 1133 in the state, as if life expectancy providers were licensees.

1134 Section 24. Section 626.99245, Florida Statutes, is
 1135 amended to read:

1136 626.99245 Conflict of regulation of viaticals.--

1137 ~~(1) A viatical settlement provider who from this state~~
 1138 ~~enters into a viatical settlement purchase agreement with a~~
 1139 ~~purchaser who is a resident of another state that has enacted~~

1140 ~~statutes or adopted regulations governing viatical settlement~~
1141 ~~purchase agreements, shall be governed in the effectuation of~~
1142 ~~that viatical settlement purchase agreement by the statutes and~~
1143 ~~regulations of the purchaser's state of residence. If the state~~
1144 ~~in which the purchaser is a resident has not enacted statutes or~~
1145 ~~regulations governing viatical settlement purchase agreements,~~
1146 ~~the provider shall give the purchaser notice that neither~~
1147 ~~Florida nor his or her state regulates the transaction upon~~
1148 ~~which he or she is entering. For transactions in these states,~~
1149 ~~however, the viatical settlement provider is to maintain all~~
1150 ~~records required as if the transactions were executed in~~
1151 ~~Florida. However, the forms used in those states need not be~~
1152 ~~approved by the office.~~

1153 (1)~~(2)~~ A viatical settlement provider who from this state
1154 enters into a viatical settlement contract with a viator who is
1155 a resident of another state that has enacted statutes or adopted
1156 regulations governing viatical settlement contracts shall be
1157 governed in the effectuation of that viatical settlement
1158 contract by the statutes and regulations of the viator's state
1159 of residence. If the state in which the viator is a resident has
1160 not enacted statutes or regulations governing viatical
1161 settlement agreements, the provider shall give the viator notice
1162 that neither Florida nor his or her state regulates the
1163 transaction upon which he or she is entering. For transactions
1164 in those states, however, the viatical settlement provider is to
1165 maintain all records required as if the transactions were
1166 executed in Florida. The forms used in those states need not be
1167 approved by the office.

1168 ~~(2)(3)~~ This section does not affect the requirement of ss.
 1169 626.9911(12)~~(5)~~ and 626.9912(1) that a viatical settlement
 1170 provider doing business from this state must obtain a viatical
 1171 settlement license from the office. As used in this subsection,
 1172 the term "doing business from this state" includes effectuating
 1173 viatical settlement contracts ~~and effectuating viatical~~
 1174 ~~settlement purchase agreements~~ from offices in this state,
 1175 regardless of the state of residence of the viator ~~or the~~
 1176 ~~viatical settlement purchaser.~~

1177 ~~(4) The offer, sale, and purchase of viatical settlement~~
 1178 ~~contracts, and the regulation of viatical settlement providers~~
 1179 ~~shall be within the exclusive jurisdiction of the Office of~~
 1180 ~~Insurance Regulation under the provisions of this part.~~

1181 Section 25. Section 626.9925, Florida Statutes, is amended
 1182 to read:

1183 626.9925 Rules.--The commission may adopt rules to
 1184 administer this act, including rules establishing standards for
 1185 evaluating advertising by licensees; rules providing for the
 1186 collection of data, for disclosures to viators ~~or purchasers,~~
 1187 and for the reporting of life expectancies and the registration
 1188 of life expectancy providers; and rules defining terms used in
 1189 this act and prescribing recordkeeping requirements relating to
 1190 executed viatical settlement contracts ~~and viatical settlement~~
 1191 ~~purchase agreements.~~

1192 Section 26. Section 626.9926, Florida Statutes, is amended
 1193 to read:

1194 626.9926 Rate regulation not authorized.--Nothing in this
 1195 act shall be construed to authorize the office or department to

1196 directly or indirectly regulate the amount paid as consideration
 1197 for entry into a viatical settlement contract ~~or viatical~~
 1198 ~~settlement purchase agreement.~~

1199 Section 27. Subsection (1) of section 626.9927, Florida
 1200 Statutes, is amended to read:

1201 626.9927 Unfair trade practices; cease and desist;
 1202 injunctions; civil remedy.--

1203 (1) A violation of this act is an unfair trade practice
 1204 under ss. 626.9521 and 626.9541 and is subject to the penalties
 1205 provided in the insurance code. Part IX ~~✕~~ of this chapter
 1206 applies to a licensee under this act or a transaction subject to
 1207 this act as if a viatical settlement contract ~~and a viatical~~
 1208 ~~settlement purchase agreement~~ were an insurance policy.

1209 Section 28. Paragraph (b) of subsection (1) of section
 1210 626.99275, Florida Statutes, is amended, and paragraph (d) is
 1211 added to said subsection, to read:

1212 626.99275 Prohibited practices; penalties.--

1213 (1) It is unlawful for any person:

1214 (b) Knowingly or with the intent to defraud, for the
 1215 purpose of depriving another of property or for pecuniary gain,
 1216 issue or use a pattern of false, misleading, or deceptive life
 1217 expectancies ~~In the solicitation or sale of a viatical~~
 1218 ~~settlement purchase agreement:~~

1219 1. ~~To employ any device, scheme, or artifice to defraud;~~

1220 2. ~~To obtain money or property by means of an untrue~~
 1221 ~~statement of a material fact or by any omission to state a~~
 1222 ~~material fact necessary in order to make the statements made, in~~

1223 ~~light of the circumstances under which they were made, not~~
 1224 ~~misleading, or~~

1225 ~~3. To engage in any transaction, practice, or course of~~
 1226 ~~business which operates or would operate as a fraud or deceit~~
 1227 ~~upon a person.~~

1228 (d) Knowingly or intentionally facilitate the change of
 1229 state of residency of a viator to avoid the provisions of this
 1230 chapter.

1231 (2) A person who violates any provision of this section
 1232 commits:

1233 (a) A felony of the third degree, punishable as provided
 1234 in s. 775.082, s. 775.083, or s. 775.084, if the insurance
 1235 policy involved is valued at any amount less than \$20,000.

1236 (b) A felony of the second degree, punishable as provided
 1237 in s. 775.082, s. 775.083, or s. 775.084, if the insurance
 1238 policy involved is valued at \$20,000 or more, but less than
 1239 \$100,000.

1240 (c) A felony of the first degree, punishable as provided
 1241 in s. 775.082, s. 775.083, or s. 775.084, if the insurance
 1242 policy involved is valued at \$100,000 or more.

1243 Section 29. Section 626.99278, Florida Statutes, is
 1244 amended to read:

1245 626.99278 Viatical provider anti-fraud plan.--Every
 1246 licensed viatical settlement provider and registered life
 1247 expectancy provider ~~viatical settlement broker~~ must adopt an
 1248 anti-fraud plan and file it with the Division of Insurance Fraud
 1249 of the department ~~on or before December 1, 2000~~. Each anti-fraud
 1250 plan shall include:

1251 (1) A description of the procedures for detecting and
 1252 investigating possible fraudulent acts and procedures for
 1253 resolving material inconsistencies between medical records and
 1254 insurance applications.~~†~~

1255 (2) A description of the procedures for the mandatory
 1256 reporting of possible fraudulent insurance acts and prohibited
 1257 practices set forth in s. 626.99275 to the Division of Insurance
 1258 Fraud of the department.~~†~~

1259 (3) A description of the plan for anti-fraud education and
 1260 training of its underwriters or other personnel.~~†~~ ~~and~~

1261 (4) A written description or chart outlining the
 1262 organizational arrangement of the anti-fraud personnel who are
 1263 responsible for the investigation and reporting of possible
 1264 fraudulent insurance acts, and investigating unresolved material
 1265 inconsistencies between medical records and insurance
 1266 applications.

1267 (5) For viatical settlement providers, a description of
 1268 the procedures used to perform initial and continuing review of
 1269 the accuracy of life expectancies utilized in connection with a
 1270 viatical settlement contract or viatical settlement investment.

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

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,
 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.