

Bill No. SB 2412

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CHAMBER ACTION

Senate

House

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The Committee on Banking and Insurance (Garcia) recommended
the following amendment:

Senate Amendment (with title amendment)

Delete everything after the enacting clause

and insert:

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

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

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

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- 1 ~~(21)~~(20) "Security" includes any of the following:
- 2 (a) A note.
- 3 (b) A stock.
- 4 (c) A treasury stock.
- 5 (d) A bond.
- 6 (e) A debenture.
- 7 (f) An evidence of indebtedness.
- 8 (g) A certificate of deposit.
- 9 (h) A certificate of deposit for a security.
- 10 (i) A certificate of interest or participation.
- 11 (j) A whiskey warehouse receipt or other commodity
- 12 warehouse receipt.
- 13 (k) A certificate of interest in a profit-sharing
- 14 agreement or the right to participate therein.
- 15 (l) A certificate of interest in an oil, gas,
- 16 petroleum, mineral, or mining title or lease or the right to
- 17 participate therein.
- 18 (m) A collateral trust certificate.
- 19 (n) A reorganization certificate.
- 20 (o) A preorganization subscription.
- 21 (p) Any transferable share.
- 22 (q) An investment contract.
- 23 (r) A beneficial interest in title to property,
- 24 profits, or earnings.
- 25 (s) An interest in or under a profit-sharing or
- 26 participation agreement or scheme.
- 27 (t) Any option contract which entitles the holder to
- 28 purchase or sell a given amount of the underlying security at
- 29 a fixed price within a specified period of time.
- 30 (u) Any other instrument commonly known as a security,
- 31 including an interim or temporary bond, debenture, note, or

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1 certificate.

2 (v) Any receipt for a security, or for subscription to
3 a security, or any right to subscribe to or purchase any
4 security.

5 (w) A viatical settlement investment.

6 (23) "Viatical settlement investment" means an
7 agreement for the purchase, sale, assignment, transfer,
8 devise, or bequest of all or any portion of a legal or
9 equitable interest in a viaticated policy as defined in
10 chapter 626. The term does not include:

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

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

19 (c) The transfer or assignment of a viaticated policy
20 from a licensed viatical settlement provider to another
21 licensed viatical settlement provider, a related provider
22 trust, or a financing entity, as those terms are defined in s.
23 626.9911, or to a contingency insurer provided that such
24 transfer or assignment is not the direct or indirect promotion
25 of any scheme or enterprise with the intent of violating or
26 evading any provision of this chapter.

27 (d) The transfer or assignment of a viaticated policy
28 to a bank, trust company, savings institution, insurance
29 company, dealer, investment company as defined in the
30 Investment Company Act of 1940, pension or profit-sharing
31 trust, or qualified institutional buyer as defined in United

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1 States Securities and Exchange Commission Rule 144A, 17 C.F.R.
 2 230.144A(a), provided such transfer or assignment is not for
 3 the direct or indirect promotion of any scheme or enterprise
 4 with the intent of violating or evading any provision of this
 5 chapter.

6 (e) The transfer or assignment of a viaticated policy
 7 by a conservator of a viatical settlement provider appointed
 8 by a court of competent jurisdiction who transfers or assigns
 9 ownership of viaticated policies pursuant to that court's
 10 order.

11 Section 2. Section 517.072, Florida Statutes, is
 12 created to read:

13 517.072 Viatical settlement investments.--The
 14 exemptions provided for by ss. 517.051(6), (8), and (10) do
 15 not apply to a viatical settlement investment. The offering of
 16 a viatical settlement investment is not an exempt transaction
 17 under s. 517.061(2), (3), (8), (11), and (18), regardless of
 18 whether the offering otherwise complies with the conditions of
 19 that section, unless such offering is to a qualified
 20 institutional buyer.

21 Section 3. Subsection (7) of section 517.081, Florida
 22 Statutes, is amended, and subsection (8) is added to that
 23 section, to read:

24 517.081 Registration procedure.--

25 (7) If upon examination of any application the office
 26 shall find that the sale of the security referred to therein
 27 would not be fraudulent and would not work or tend to work a
 28 fraud upon the purchaser, that the terms of the sale of such
 29 securities would be fair, just, and equitable, and that the
 30 enterprise or business of the issuer is not based upon unsound
 31 business principles, it shall record the registration of such

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1 security in the register of securities; and thereupon such
 2 security so registered may be sold by any registered dealer,
 3 subject, however, to the further order of the office. In order
 4 to determine if an offering is fair, just, and equitable, the
 5 commission may by rule establish requirements and standards
 6 for the filing, content, and circulation of any preliminary,
 7 final, or amended prospectus and other sales literature and
 8 may by rule establish merit qualification criteria relating to
 9 the issuance of equity securities, debt securities, insurance
 10 company securities, real estate investment trusts, and other
 11 traditional and nontraditional investments, including, but not
 12 limited to, oil and gas investments. The criteria may include
 13 such elements as the promoter's equity investment ratio, the
 14 financial condition of the issuer, the voting rights of
 15 shareholders, the grant of options or warrants to underwriters
 16 and others, loans and other affiliated transaction, the use or
 17 refund of proceeds of the offering, and such other relevant
 18 criteria as the office in its judgment may deem necessary to
 19 such determination.

20 (8) The commission may by rule establish requirements
 21 and standards for:

22 (a) Disclosures to purchasers of viatical settlement
 23 investments.

24 (b) Recordkeeping requirements for sellers of viatical
 25 settlement investments.

26 Section 4. Section 517.1215, Florida Statutes, is
 27 created to read:

28 517.1215 Requirements, rules of conduct, and
 29 prohibited business practices for investment advisors and
 30 their associated persons.--

31 (1) The commission shall specify by rule requirements

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1 for investment advisors deemed to have custody of client funds

2 which concern the following:

3 (a) Notification of custody of, maintenance of, and
4 safeguards for client funds.

5 (b) Communications with clients and independent
6 representatives.

7 (c) Requirements for investment advisers who have
8 custody of pooled investments.

9 (d) Exceptions to the custody requirements.

10

11 In adopting the rules, the commission shall consider the rules
12 and regulations of the federal regulatory authority and the
13 North American Securities Administrators Association.

14 (2) The commission shall by rule establish rules of
15 conduct and prohibited business practices for investment
16 advisers and their associated persons. In adopting the rules,
17 the commission shall consider general industry standards as
18 expressed in the rules and regulations of the various federal
19 and self-regulatory agencies and regulatory associations,
20 including, but not limited to, the United States Securities
21 and Exchange Commission, the National Association of
22 Securities Dealers, and the North American Securities
23 Administrators Association.

24 Section 5. Section 517.1217, Florida Statutes, is
25 created to read:

26 517.1217 Rules of conduct and prohibited business
27 practices for dealers and their associated persons.--The
28 commission by rule may establish rules of conduct and
29 prohibited business practices for dealers and their associated
30 persons. In adopting the rules, the commission shall consider
31 general industry standards as expressed in the rules and

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1 regulations of the various federal and self-regulatory
 2 agencies and regulatory associations, including, but not
 3 limited to, the United States Securities and Exchange
 4 Commission, the National Association of Securities Dealers,
 5 and the North American Securities Administrators Association.

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

8 624.501 Filing, license, appointment, and
 9 miscellaneous fees.--The department, commission, or office, as
 10 appropriate, shall collect in advance, and persons so served
 11 shall pay to it in advance, fees, licenses, and miscellaneous
 12 charges as follows:

13 (7) Life insurance agents.

14 (a) Agent's original appointment and biennial renewal
 15 or continuation thereof, each insurer or agent making an
 16 appointment:

17	Appointment.....	\$42.00
18	State tax.....	12.00
19	County tax.....	6.00
20	Total.....	\$60.00

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

23 626.015 Definitions.--As used in this part:

24 (10) "Life agent" means an individual representing an
 25 insurer as to life insurance and annuity contracts, or acting
 26 as a viatical settlement broker as defined in s. 626.9911,
 27 including agents appointed to transact life insurance,
 28 fixed-dollar annuity contracts, or variable contracts by the
 29 same insurer.

30 Section 8. Paragraph (b) of subsection (1) of section
 31 626.112, Florida Statutes, is amended to read:

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1 626.112 License and appointment required; agents,
2 customer representatives, adjusters, insurance agencies,
3 service representatives, managing general agents.--

4 (1)

5 (b) Except as provided in subsection (6) or in
6 applicable department rules, and in addition to other conduct
7 described in this chapter with respect to particular types of
8 agents, a license as an insurance agent, service
9 representative, customer representative, or limited customer
10 representative is required in order to engage in the
11 solicitation of insurance. For purposes of this requirement,
12 as applicable to any of the license types described in this
13 section, the solicitation of insurance is the attempt to
14 persuade any person to purchase an insurance product by:

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

17 2. Distributing an invitation to contract to
18 prospective purchasers;

19 3. Making general or specific recommendations as to
20 insurance products;

21 4. Completing orders or applications for insurance
22 products; ~~or~~

23 5. Comparing insurance products, advising as to
24 insurance matters, or interpreting policies or coverages; or

25 6. Offering or attempting to negotiate on behalf of
26 another person a viatical settlement contract as defined in s.
27 626.9911.

28
29 However, an employee leasing company licensed pursuant to
30 chapter 468 which is seeking to enter into a contract with an
31 employer that identifies products and services offered to

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1 employees may deliver proposals for the purchase of employee
2 leasing services to prospective clients of the employee
3 leasing company setting forth the terms and conditions of
4 doing business; classify employees as permitted by s. 468.529;
5 collect information from prospective clients and other sources
6 as necessary to perform due diligence on the prospective
7 client and to prepare a proposal for services; provide and
8 receive enrollment forms, plans, and other documents; and
9 discuss or explain in general terms the conditions,
10 limitations, options, or exclusions of insurance benefit plans
11 available to the client or employees of the employee leasing
12 company were the client to contract with the employee leasing
13 company. Any advertising materials or other documents
14 describing specific insurance coverages must identify and be
15 from a licensed insurer or its licensed agent or a licensed
16 and appointed agent employed by the employee leasing company.
17 The employee leasing company may not advise or inform the
18 prospective business client or individual employees of
19 specific coverage provisions, exclusions, or limitations of
20 particular plans. As to clients for which the employee leasing
21 company is providing services pursuant to s. 468.525(4), the
22 employee leasing company may engage in activities permitted by
23 ss. 626.7315, 626.7845, and 626.8305, subject to the
24 restrictions specified in those sections. If a prospective
25 client requests more specific information concerning the
26 insurance provided by the employee leasing company, the
27 employee leasing company must refer the prospective business
28 client to the insurer or its licensed agent or to a licensed
29 and appointed agent employed by the employee leasing company.

30 Section 9. Section 626.207, Florida Statutes, is
31 amended to read:

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1 626.207 Department rulemaking authority; waiting
2 periods for applicants; penalties against licensees.--

3 (1) The department shall adopt rules establishing
4 specific waiting periods for applicants to become eligible for
5 licensure following denial, suspension, or revocation pursuant
6 to s. 626.611, s. 626.621, s. 626.8437, s. 626.844, s.
7 626.935, ~~s. 626.9917~~, s. 634.181, s. 634.191, s. 634.320, s.
8 634.321, s. 634.422, s. 634.423, s. 642.041, or s. 642.043.

9 The purpose of the waiting periods is to provide sufficient
10 time to demonstrate reformation of character and
11 rehabilitation. The waiting periods shall vary based on the
12 type of conduct and the length of time since the conduct
13 occurred and shall also be based on the probability that the
14 propensity to commit illegal conduct has been overcome. The
15 waiting periods may be adjusted based on aggravating and
16 mitigating factors established by rule and consistent with
17 this purpose.

18 (2) The department shall adopt rules establishing
19 specific penalties against licensees for violations of s.
20 626.611, s. 626.621, s. 626.8437, s. 626.844, s. 626.935, ~~s.~~
21 ~~626.9917~~, s. 634.181, s. 634.191, s. 634.320, s. 634.321, s.
22 634.422, s. 634.423, s. 642.041, or s. 642.043. The purpose of
23 the revocation or suspension is to provide a sufficient
24 penalty to deter future violations of the Florida Insurance
25 Code. The imposition of a revocation or the length of
26 suspension shall be based on the type of conduct and the
27 probability that the propensity to commit further illegal
28 conduct has been overcome at the time of eligibility for
29 relicensure. The revocation or the length of suspension may be
30 adjusted based on aggravating or mitigating factors,
31 established by rule and consistent with this purpose.

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

3 626.331 Number of appointments permitted or
4 required.--

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

9 Section 11. Subsection (17) is added to section
10 626.611, Florida Statutes, to read:

11 626.611 Grounds for compulsory refusal, suspension, or
12 revocation of agent's, title agency's, adjuster's, customer
13 representative's, service representative's, or managing
14 general agent's license or appointment.--The department shall
15 deny an application for, suspend, revoke, or refuse to renew
16 or continue the license or appointment of any applicant,
17 agent, title agency, adjuster, customer representative,
18 service representative, or managing general agent, and it
19 shall suspend or revoke the eligibility to hold a license or
20 appointment of any such person, if it finds that as to the
21 applicant, licensee, or appointee any one or more of the
22 following applicable grounds exist:

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

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

26 (b) No longer meeting the requirements for initial
27 licensure.

28 (c) Having received a fee, commission, or other
29 valuable consideration for his or her services with respect to
30 viatical settlements that involved unlicensed viatical
31 settlement providers or persons who offered or attempted to

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1 negotiate on behalf of another person a viatical settlement
2 contract as defined in s. 626.9911 and who were not licensed
3 life agents.

4 (d) Dealing in bad faith with viators.

5 Section 12. Section 626.777, Florida Statutes, is
6 amended to read:

7 626.777 Scope of this part.--This part applies only to
8 agents of life insurers, ~~and to~~ agents who are appointed by
9 the same insurer as to both life insurance and health
10 insurance, and agents who perform the functions of a viatical
11 settlement broker as defined in s. 626.9911.

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

14 626.7845 Prohibition against unlicensed transaction of
15 life insurance.--

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

19 (a) Solicit insurance or annuities or procure
20 applications; ~~or~~

21 (b) In this state, engage or hold himself or herself
22 out as engaging in the business of analyzing or abstracting
23 insurance policies or of counseling or advising or giving
24 opinions to persons relative to insurance or insurance
25 contracts other than:

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

27 2. As to the counseling and advising of labor unions,
28 associations, trustees, employers, or other business entities,
29 the subsidiaries and affiliates of each, relative to their
30 interests and those of their members or employees under
31 insurance benefit plans; or

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1 (c) In this state, from this state, or with a resident
 2 of this state, offer or attempt to negotiate on behalf of
 3 another person a viatical settlement contract as defined in s.
 4 626.9911.

5 Section 14. Section 626.9911, Florida Statutes, is
 6 amended to read:

7 626.9911 Definitions.--As used in this act, the term:

8 (1)(14) "Financing entity" means an underwriter,
 9 placement agent, lender, purchaser of securities, or purchaser
 10 of a policy or certificate from a viatical settlement
 11 provider, credit enhancer, or any entity that has direct
 12 ownership in a policy or certificate that is the subject of a
 13 viatical settlement contract, but whose principal activity
 14 related to the transaction is providing funds or credit
 15 enhancement to effect the viatical settlement or the purchase
 16 of one or more viaticated ~~viatical~~ policies and who has an
 17 agreement in writing with one or more licensed viatical
 18 settlement providers to finance the acquisition of viatical
 19 settlement contracts. The term does not include a
 20 nonaccredited investor, ~~a viatical settlement purchaser,~~ or
 21 other natural person. A financing entity may not enter into a
 22 viatical settlement contract.

23 (2)(1) "Independent third-party trustee or escrow
 24 agent" means an attorney, certified public accountant,
 25 financial institution, or other person providing escrow
 26 services under the authority of a regulatory body. The term
 27 does not include any person associated, affiliated, or under
 28 common control with a viatical settlement provider or viatical
 29 settlement broker.

30 (3) "Life expectancy" means an opinion or evaluation
 31 as to how long a particular person is to live, or relating to

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1 such person's expected demise.

2 (4) "Life expectancy provider" means a person that
3 provides to a viatical settlement provider or viatical
4 settlement broker a life expectancy.

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

6 ~~(6)(12)~~ "Related form" means any form, created by or
7 on behalf of a licensee, which a viator ~~or viatical settlement~~
8 ~~purchaser~~ is required to sign or initial. The forms include,
9 but are not limited to, a power of attorney, a release of
10 medical information form, a suitability questionnaire, a
11 disclosure document, or any addendum, schedule, or amendment
12 to a viatical settlement contract ~~or viatical settlement~~
13 ~~purchase agreement~~ considered necessary by a provider to
14 effectuate a viatical settlement transaction.

15 (7) "Related provider trust" means a titling trust or
16 other trust established by a licensed viatical settlement
17 provider or financing entity for the sole purpose of holding
18 the ownership or beneficial interest in purchased policies in
19 connection with a financing transaction. The trust must have a
20 written agreement with a licensed viatical settlement provider
21 or financing entity under which the licensed viatical
22 settlement provider or financing entity is responsible for
23 insuring compliance with all statutory and regulatory
24 requirements and under which the trust agrees to make all
25 records and files relating to viatical settlement transactions
26 available to the office as if those records and files were
27 maintained directly by the licensed viatical settlement
28 provider. This term does not include an independent
29 third-party trustee or escrow agent or a trust that does not
30 enter into agreements with a viator. A related provider trust
31 shall be subject to all provisions of this act that apply to

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1 the viatical settlement provider who established the related
 2 provider trust, except s. 626.9912, which shall not be
 3 applicable. A viatical settlement provider may establish no
 4 more than one related provider trust, and the sole trustee of
 5 such related provider trust shall be the viatical settlement
 6 provider licensed under s. 626.9912. The name of the licensed
 7 viatical settlement provider shall be included within the name
 8 of the related provider trust.

9 ~~(8)(13)~~ "Special purpose entity" means an entity
 10 established by a licensed viatical settlement provider or by a
 11 financing entity, which may be a corporation, partnership,
 12 trust, limited liability company, or other similar entity
 13 formed solely to provide, either directly or indirectly,
 14 access to institutional capital markets to a viatical
 15 settlement provider or financing entity. A special purpose
 16 entity shall not enter into a viatical settlement contract ~~or~~
 17 ~~a viatical settlement purchase agreement.~~

18 ~~(9)(3)~~ "Viatical settlement broker" means a person
 19 who, on behalf of a viator and for a fee, commission, or other
 20 valuable consideration, offers or attempts to negotiate
 21 viatical settlement contracts between a viator resident in
 22 this state and one or more viatical settlement providers.
 23 Notwithstanding the manner in which the viatical settlement
 24 broker is compensated, a viatical settlement broker is deemed
 25 to represent only the viator and owes a fiduciary duty to the
 26 viator to act according to the viator's instructions and in
 27 the best interest of the viator. The term does not include an
 28 attorney, licensed Certified Public Accountant, or investment
 29 adviser lawfully registered under chapter 517, who is retained
 30 to represent the viator and whose compensation is paid
 31 directly by or at the direction and on behalf of the viator.

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1 ~~(10)(4)~~ "Viatical settlement contract" means a written
 2 agreement entered into between a viatical settlement provider,
 3 or its related provider trust, and a viator. The viatical
 4 settlement contract includes an agreement to transfer
 5 ownership or change the beneficiary designation of a life
 6 insurance policy at a later date, regardless of the date that
 7 compensation is paid to the viator. The agreement must
 8 establish the terms under which the viatical settlement
 9 provider will pay compensation or anything of value, which
 10 compensation or value is less than the expected death benefit
 11 of the insurance policy or certificate, in return for the
 12 viator's assignment, transfer, sale, devise, or bequest of the
 13 death benefit or ownership of all or a portion of the
 14 insurance policy or certificate of insurance to the viatical
 15 settlement provider. A viatical settlement contract also
 16 includes a contract for a loan or other financial transaction
 17 secured primarily by an individual or group life insurance
 18 policy, other than a loan by a life insurance company pursuant
 19 to the terms of the life insurance contract, or a loan secured
 20 by the cash value of a policy.

21 ~~(11)(5)~~ "Viatical settlement provider" means a person
 22 who, in this state, from this state, or with a resident of
 23 this state, effectuates a viatical settlement contract. The
 24 term does not include:

25 (a) Any bank, savings bank, savings and loan
 26 association, credit union, or other licensed lending
 27 institution that takes an assignment of a life insurance
 28 policy as collateral for a loan.

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

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

5 (d) A trust that meets the definition of a "related
 6 provider trust."

7 (e) A viator in this state.

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

9 (f)(g) A financing entity.

10 ~~(12)(11)~~ "Viaticated policy" means a life insurance
 11 policy, or a certificate under a group policy, which is the
 12 subject of a viatical settlement contract.

13 ~~(13)(6)~~ "Viator" means the owner of a life insurance
 14 policy or a certificateholder under a group policy, which
 15 policy is not a viaticated policy, who enters or seeks to
 16 enter into a viatical settlement contract. This term does not
 17 include a ~~viatical settlement purchaser or a viatical~~
 18 ~~settlement provider or any person acquiring a policy or~~
 19 ~~interest in a policy from a viatical settlement provider, nor~~
 20 ~~does it include an independent third-party trustee or escrow~~
 21 ~~agent.~~

22 ~~(8) "Viatical settlement purchase agreement" means a~~
 23 ~~contract or agreement, entered into by a viatical settlement~~
 24 ~~purchaser, to which the viator is not a party, to purchase a~~
 25 ~~life insurance policy or an interest in a life insurance~~
 26 ~~policy, which is entered into for the purpose of deriving an~~
 27 ~~economic benefit. The term also includes purchases made by~~
 28 ~~viatical settlement purchasers from any person other than the~~
 29 ~~provider who effectuated the viatical settlement contract.~~

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

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1 ~~policy or an equitable or legal interest in the death benefits~~
2 ~~of a life insurance policy that has been or will be the~~
3 ~~subject of a viatical settlement contract, for the purpose of~~
4 ~~deriving an economic benefit, including purchases made from~~
5 ~~any person other than the provider who effectuated the~~
6 ~~viatical settlement contract or an entity affiliated with the~~
7 ~~provider. The term does not include a licensee under this~~
8 ~~part, an accredited investor as defined in Rule 501,~~
9 ~~Regulation D of the Securities Act Rules, or a qualified~~
10 ~~institutional buyer as defined by Rule 144(a) of the Federal~~
11 ~~Securities Act, a special purpose entity, a financing entity,~~
12 ~~or a contingency insurer. The above references to Rule 501,~~
13 ~~Regulation D and Rule 144(a) of the Federal Securities Act are~~
14 ~~used strictly for defining purposes and shall not be~~
15 ~~interpreted in any other manner. Any person who claims to be~~
16 ~~an accredited investor shall sign an affidavit stating that he~~
17 ~~or she is an accredited investor, the basis of that claim, and~~
18 ~~that he or she understands that as an accredited investor he~~
19 ~~or she will not be entitled to certain protections of the~~
20 ~~Viatical Settlement Act. This affidavit must be kept with~~
21 ~~other documents required to be maintained by this act.~~

22 ~~(10) "Viatical settlement sales agent" means a person~~
23 ~~other than a licensed viatical settlement provider who~~
24 ~~arranges the purchase through a viatical settlement purchase~~
25 ~~agreement of a life insurance policy or an interest in a life~~
26 ~~insurance policy.~~

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

30 626.9912 Viatical settlement provider license
31 required; application for license.--

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

3 (f) All applications, viatical settlement contract
4 forms, ~~viatical settlement purchase agreement forms~~, escrow
5 forms, and other related forms proposed to be used by the
6 applicant.

7 (4) The office may not issue a license to an entity
8 other than a natural person if it is not satisfied that all
9 officers, directors, employees, stockholders, partners, and
10 any other persons who exercise or have the ability to exercise
11 effective control of the entity or who have the ability to
12 influence the transaction of business by the entity meet the
13 standards of this act and have not violated any provision of
14 this act or rules of the commission related to the business of
15 viatical settlement contracts ~~or viatical settlement purchase~~
16 ~~agreements~~.

17 Section 16. Section 626.9913, Florida Statutes, is
18 amended to read:

19 626.9913 Viatical settlement provider license
20 continuance; annual report; fees; deposit.--

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

23 (2) Annually, on or before March 1, the viatical
24 settlement provider licensee shall file a statement containing
25 information the commission requires and shall pay to the
26 office a license fee in the amount of \$500. The annual
27 statement shall include audited financial statements prepared
28 in accordance with generally accepted accounting principles by
29 an independent certified public accountant as of the last day
30 of the preceding calendar year. A viatical settlement provider
31 shall include in all statements filed with the office all

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1 information requested by the office regarding a related
 2 provider trust established by the viatical settlement
 3 provider. The office may require more frequent reporting.
 4 Failure to timely file the annual statement or to timely pay
 5 the license fee is grounds for immediate suspension of the
 6 license.

7 (3) To ensure the faithful performance of its
 8 obligations to its viators in the event of insolvency or the
 9 loss of its license, a viatical settlement provider licensee
 10 must deposit and maintain deposited in trust with the
 11 department securities eligible for deposit under s. 625.52,
 12 having at all times a value of not less than \$100,000,
 13 provided a viatical settlement provider in this state licensed
 14 prior to June 1, 2004, which has deposited and maintains
 15 continuously deposited in trust with the department securities
 16 in the amount of \$25,000 and which posted and maintains
 17 continuously posted a security bond acceptable to the
 18 department in the amount of \$75,000, has until June 1, 2005,
 19 to comply with the requirements of this subsection. As an
 20 ~~alternative to meeting the \$100,000 deposit requirement, the~~
 21 ~~provider may deposit and maintain deposited in trust with the~~
 22 ~~department such securities in the amount of \$25,000 and post~~
 23 ~~with the office a surety bond acceptable to the office in the~~
 24 ~~amount of \$75,000.~~

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

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

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

4 (a) For each viatical settlement contract entered into
5 during the reporting period:

6 1. A unique identifying number or other consistent
7 identifier that corresponds to each viator in the statement,
8 as a means of identifying the viator in a manner that does not
9 reveal any confidential information.

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

12 3. The insurance carrier's name.

13 4. The age and each life expectancy, in months, of the
14 insured at the time the viatical settlement contract was
15 entered into.

16 5. The viator's state of residence at the time of
17 contract.

18 6. The face amount of policy purchased.

19 7. The net death benefit purchased.

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

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

26 10. The source of the policy, whether broker, direct
27 purchase, or secondary market, previously purchased by another
28 person.

29 11. The type of policy, individual or group.

30 12. The age of the policy at the time the viatical
31 settlement contract was effected.

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1 13. The primary International Classification of
 2 Diseases diagnosis code, if applicable, in numeric format, as
 3 defined by the International Classification of Diseases as
 4 published by the United States Department of Health and Human
 5 Services.

6 14. The type of funding, whether institutional, such
 7 as a bank, corporation, company, or nonindividual entity, or
 8 private, such as an individual.

9 15. The status as of ending date. Allowable status
 10 codes are death, if applicable; not applicable, if the date of
 11 death has not been determined or verified; or sold, if the
 12 settlement contract has been sold.

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

15 1. A unique identifying number or other consistent
 16 identifier that corresponds to each viator in the report, as a
 17 means of identifying the viator in a manner that does not
 18 reveal any confidential information.

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

21 3. The age and each life expectancy, in months, of the
 22 insured at the time the viatical settlement contract was
 23 entered into.

24 4. The viator's state of residence at the time of
 25 contract.

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

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

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

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1 8. The Primary International Classification of
 2 Diseases diagnosis code, in numeric format, if applicable, as
 3 defined by the International Classification of Diseases as
 4 published by the United States Department of Health and Human
 5 Services.

6 9. The date of death.

7 10. The amount of time, in months, between the date
 8 the viatical settlement contract was signed by all necessary
 9 parties and the date of death.

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

14 (c) For each viatical settlement contract in which the
 15 insured has not died and which was not entered into in the
 16 reporting period:

17 1. A unique identifying number or other consistent
 18 identifier that corresponds to each viator in the report as a
 19 means of identifying the viator in a manner that does not
 20 reveal any confidential information.

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

23 3. The insurance carrier's name.

24 4. The age and each life expectancy, in months, of the
 25 insured at the time the viatical settlement contract was
 26 entered into.

27 5. The viator's state of residence at the time of
 28 contract.

29 6. The face amount of policy purchased.

30 7. The net death benefit purchased.

31 8. The estimated total premiums to keep the policy in

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1 force for life expectancy, any waiver of premium in effect, or
2 whether the premium is not applicable because the policy is
3 paid up or no premiums are due.

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

6 10. The source of the policy, whether by broker,
7 direct purchase, or the secondary market, previously purchased
8 by another person.

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

10 12. The age of the policy at the time the viatical
11 settlement contract was effected.

12 13. The primary International Classification of
13 Diseases diagnosis code, if applicable, in numeric format, as
14 defined by the International Classification of Diseases as
15 published by the United States Department of Health and Human
16 Services.

17 14. The type of funding, whether institutional, such
18 as a bank, corporation, company, or nonindividual entity, or
19 private, such as an individual.

20 15. Whether the insured has outlived the life
21 expectancy. If the insured has outlived the life expectancy,
22 the number of months by which the insured has outlived the
23 life expectancy.

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

26 (e) The name and address of any person whom the
27 viatical settlement provider uses or employs to monitor or
28 track an insured's health status after a viatical settlement
29 contract has been signed by all necessary parties and payment
30 has been made to the owner.

31 Section 17. Subsection (1) of section 626.9914,

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1 Florida Statutes, is amended to read:

2 626.9914 Suspension, revocation, or nonrenewal of
3 viatical settlement provider license; grounds; administrative
4 fine.--

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

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

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

13 (c) Demonstrates a pattern of unreasonable payments to
14 viators;

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

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

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

23 (g) Deals in bad faith with viators;

24 (h) Has violated any provision of the insurance code
25 or of this act;

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

29 (j) No longer meets the requirements for initial
30 licensure.

31 Section 18. Section 626.9916, Florida Statutes, is

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1 amended to read:

2 626.9916 Viatical settlement broker license required ~~→~~
3 ~~application for license.--~~

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

10 (2) Before performing the functions of a viatical
11 settlement broker, a life agent shall appoint himself or
12 herself with the department and pay applicable fees pursuant
13 to s. 624.501(7)(a). ~~Application for a viatical settlement~~
14 ~~broker license must be made to the department by the applicant~~
15 ~~on a form prescribed by the department, under oath, and signed~~
16 ~~by the applicant. The application must be accompanied by a \$50~~
17 ~~filing fee. If the applicant is a corporation, the application~~
18 ~~must be under oath and signed by the president and the~~
19 ~~secretary of the corporation.~~

20 (3) Each natural person who on July 1, 2005, held a
21 viatical settlement broker's license and self-appointment may,
22 upon obtaining a life agent license on or before October 1,
23 2005, transfer an existing broker self-appointment to such
24 license. ~~In the application, the applicant must provide all of~~
25 ~~the following:~~

26 (a) ~~The applicant's full name, age, residence address,~~
27 ~~and business address, and all occupations engaged in by the~~
28 ~~applicant during the 5 years preceding the date of the~~
29 ~~application; if the applicant is not a natural person, the~~
30 ~~applicant must provide the information required by this~~
31 ~~paragraph with respect to all officers, directors, or~~

1 ~~partners.~~

2 ~~(b) A copy of the applicant's basic organizational~~
3 ~~documents, if any, including the articles of incorporation,~~
4 ~~articles of association, partnership agreement, trust~~
5 ~~agreement, or other similar documents, together with all~~
6 ~~amendments to such documents.~~

7 ~~(c) If the applicant is not a natural person, a list~~
8 ~~showing the name, business and residence addresses, and~~
9 ~~official position of each individual who is responsible for~~
10 ~~conduct of the applicant's affairs, including, but not limited~~
11 ~~to, any member of the applicant's board of directors, board of~~
12 ~~trustees, executive committee, or other governing board or~~
13 ~~committee and any other person or entity owning or having the~~
14 ~~right to acquire 10 percent or more of the voting securities~~
15 ~~of the applicant.~~

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

18 1. ~~A sworn biographical statement on forms supplied by~~
19 ~~the department.~~

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

23 3. ~~Authority, if required by the department, for~~
24 ~~release of information relating to the investigation of the~~
25 ~~individual's background.~~

26 ~~(e) Such other information as the department deems~~
27 ~~necessary to determine that the individual applicant and the~~
28 ~~individuals identified under paragraph (c) are competent and~~
29 ~~trustworthy and can lawfully and successfully act as a~~
30 ~~viatical settlement provider.~~

31 (4) All viatical settlement broker licenses shall

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1 terminate on October 1, 2005, and shall not be subject to
2 continuation or renewal. Any natural person who is employed by
3 or otherwise represents a viatical settlement broker licensee,
4 which broker licensee is not a natural person, must also be
5 licensed as a viatical settlement broker if such employee or
6 other representative performs the functions of a viatical
7 settlement broker as defined in this act.

8 (5) Notwithstanding the manner in which the viatical
9 settlement broker is compensated, he or she is deemed to
10 represent only the viator and owes a fiduciary duty to the
11 viator to act according to the viator's instructions and in
12 the best interest of the viator. The department may not issue
13 a license to an applicant if it is not satisfied that the
14 applicant, if a natural person, or all officers, directors,
15 employees, stockholders, and partners who exercise or have the
16 ability to exercise effective control of the applicant or who
17 have the ability to influence the transaction of business by
18 the applicant, if the applicant is not a natural person, meet
19 the standards of this act and have not violated any provision
20 of this act or rules of the department related to the business
21 of viatical settlement contracts.

22 (6) The compensation received by a life agent for
23 activities performed as a viatical settlement broker may not
24 be divided or shared with another person unless such other
25 person is a life agent licensed under this chapter and
26 appointed as provided in this part. The department may specify
27 the form of the license and may require photographing of the
28 applicant as part of the application process.

29 (7) Upon the filing of a sworn application and the
30 payment of the license fee and all other applicable fees under
31 this act, the department shall investigate each applicant and

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1 ~~may issue the applicant a license if the department finds that~~
2 ~~the applicant:~~

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

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

10 ~~(c) Except with respect to applicants for nonresident~~
11 ~~licenses, is a bona fide resident of this state and actually~~
12 ~~resides in this state at least 180 days a year. If an~~
13 ~~applicant holds a similar license or an insurance agent's or~~
14 ~~broker's license in another state at the time of applying for~~
15 ~~a license under this section, the applicant may be found to~~
16 ~~meet the residency requirement of this paragraph only after he~~
17 ~~or she furnishes a letter of clearance satisfactory to the~~
18 ~~department or other proof that the applicant's resident~~
19 ~~licenses have been canceled or changed to nonresident status~~
20 ~~and that the applicant is in good standing with the licensing~~
21 ~~authority.~~

22 ~~(d) Is a corporation, a corporation incorporated under~~
23 ~~the laws of this state, or a foreign corporation authorized to~~
24 ~~transact business in this state.~~

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

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

31 ~~(g) An applicant for a nonresident viatical settlement~~

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1 ~~broker license must, in addition to designating the Chief~~
 2 ~~Financial Officer as agent for service of process as required~~
 3 ~~by this section, also furnish the department with the name and~~
 4 ~~address of a resident of this state upon whom notices or~~
 5 ~~orders of the department or process affecting the applicant or~~
 6 ~~licensee may be served. After issuance of the license, the~~
 7 ~~licensee must also notify the department of change of the~~
 8 ~~person to receive such notices, orders, or process; such~~
 9 ~~change is not effective until acknowledged by the department.~~

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

13 ~~(10) Except as otherwise provided in this section,~~
 14 ~~viatical settlement brokers shall be licensed, appointed,~~
 15 ~~renewed, continued, reinstated, and terminated in the manner~~
 16 ~~specified in this chapter for insurance representatives~~
 17 ~~generally; however, viatical settlement brokers are not~~
 18 ~~subject to continuing education requirements.~~

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

21 626.9919 Notice of change of licensee address or
 22 name.--Each viatical settlement provider licensee, ~~viatical~~
 23 ~~settlement broker licensee, and viatical settlement sales~~
 24 ~~agent licensee~~ must provide the office ~~or department, as~~
 25 ~~applicable,~~ at least 30 days' advance notice of any change in
 26 the licensee's name, residence address, principal business
 27 address, or mailing address.

28 Section 20. Section 626.992, Florida Statutes, is
 29 amended to read:

30 626.992 Use of licensed viatical settlement providers
 31 and viatical settlement licensed brokers, ~~providers, and sales~~

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1 ~~agents~~ required.--

2 (1) A licensed viatical settlement provider may not
3 use any person to perform the functions of a viatical
4 settlement broker as defined in this act unless such person
5 holds a current, valid life agent license and has appointed
6 himself or herself in conformance with this act ~~as a viatical~~
7 ~~settlement broker. Salaried individuals employed by viatical~~
8 ~~settlement providers shall engage in viatical settlement~~
9 ~~broker activities only when accompanied by a viatical~~
10 ~~settlement broker who holds a current valid license issued~~
11 ~~under this act. A viatical settlement provider may not use any~~
12 ~~person to perform the functions of a viatical settlement sales~~
13 ~~agent unless the person holds a current, valid license as~~
14 ~~provided in subsection (4).~~

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

19 ~~(3) A viatical settlement sales agent may not use any~~
20 ~~person to perform the functions of a viatical settlement~~
21 ~~broker unless such person holds a current, valid license as a~~
22 ~~viatical settlement broker.~~

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

27 Section 21. Subsections (1) and (2) of section
28 626.9921, Florida Statutes, are amended to read:

29 626.9921 Filing of forms; required procedures;
30 approval.--

31 (1) A viatical settlement contract form, ~~viatical~~

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1 ~~settlement purchase agreement form~~, escrow form, or related
 2 form may be used in this state only after the form has been
 3 filed with the office and only after the form has been
 4 approved by the office.

5 (2) The viatical settlement contract form, ~~viatical~~
 6 ~~settlement purchase agreement form~~, escrow form, or related
 7 form must be filed with the office at least 60 days before its
 8 use. The form is considered approved on the 60th day after its
 9 date of filing unless it has been previously disapproved by
 10 the office. The office must disapprove a viatical settlement
 11 contract form, ~~viatical settlement purchase agreement form~~,
 12 escrow form, or related form that is unreasonable, contrary to
 13 the public interest, discriminatory, or misleading or unfair
 14 to the viator ~~or the purchaser~~.

15 Section 22. Subsection (2) of section 626.9922,
 16 Florida Statutes, is amended, and subsections (5), (6), and
 17 (7) are added to that section, to read:

18 626.9922 Examination.--

19 (2) All accounts, books and records, documents, files,
 20 contracts, and other information relating to all transactions
 21 of viatical settlement contracts or viatical settlement
 22 purchase agreements made before July 1, 2005, must be
 23 maintained by the licensee for a period of at least 3 years
 24 after the death of the insured and must be available to the
 25 office or department for inspection during reasonable business
 26 hours.

27 (5) The office has jurisdiction over all viatical
 28 settlement purchase agreements made before July 1, 2005,
 29 including, but not limited to, the authority to examine
 30 persons in possession of records relating to viatical
 31 settlement purchase agreements made before July 1, 2005, and

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1 that authority set forth in s. 624.319.

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

10 (7) Subsections (1), (2), (3), and (4) apply to life
11 expectancy providers providing life expectancies in the state
12 and providing life expectancies to viatical settlement
13 providers in the state, as if life expectancy providers were
14 licensees.

15 Section 23. Section 626.99245, Florida Statutes, is
16 amended to read:

17 626.99245 Conflict of regulation of viaticals.--

18 ~~(1) A viatical settlement provider who from this state~~
19 ~~enters into a viatical settlement purchase agreement with a~~
20 ~~purchaser who is a resident of another state that has enacted~~
21 ~~statutes or adopted regulations governing viatical settlement~~
22 ~~purchase agreements, shall be governed in the effectuation of~~
23 ~~that viatical settlement purchase agreement by the statutes~~
24 ~~and regulations of the purchaser's state of residence. If the~~
25 ~~state in which the purchaser is a resident has not enacted~~
26 ~~statutes or regulations governing viatical settlement purchase~~
27 ~~agreements, the provider shall give the purchaser notice that~~
28 ~~neither Florida nor his or her state regulates the transaction~~
29 ~~upon which he or she is entering. For transactions in these~~
30 ~~states, however, the viatical settlement provider is to~~
31 ~~maintain all records required as if the transactions were~~

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1 ~~executed in Florida. However, the forms used in those states~~
 2 ~~need not be approved by the office.~~

3 ~~(1)(2)~~ A viatical settlement provider who from this
 4 state enters into a viatical settlement contract with a viator
 5 who is a resident of another state that has enacted statutes
 6 or adopted regulations governing viatical settlement contracts
 7 shall be governed in the effectuation of that viatical
 8 settlement contract by the statutes and regulations of the
 9 viator's state of residence. If the state in which the viator
 10 is a resident has not enacted statutes or regulations
 11 governing viatical settlement agreements, the provider shall
 12 give the viator notice that neither Florida nor his or her
 13 state regulates the transaction upon which he or she is
 14 entering. For transactions in those states, however, the
 15 viatical settlement provider is to maintain all records
 16 required as if the transactions were executed in Florida. The
 17 forms used in those states need not be approved by the office.

18 ~~(2)(3)~~ This section does not affect the requirement of
 19 ss. 626.9911~~(11)(5)~~ and 626.9912(1) that a viatical settlement
 20 provider doing business from this state must obtain a viatical
 21 settlement license from the office. As used in this
 22 subsection, the term "doing business from this state" includes
 23 effectuating viatical settlement contracts ~~and effectuating~~
 24 ~~viatical settlement purchase agreements~~ from offices in this
 25 state, regardless of the state of residence of the viator ~~or~~
 26 ~~the viatical settlement purchaser.~~

27 ~~(4)~~ ~~The offer, sale, and purchase of viatical~~
 28 ~~settlement contracts, and the regulation of viatical~~
 29 ~~settlement providers shall be within the exclusive~~
 30 ~~jurisdiction of the Office of Insurance Regulation under the~~
 31 ~~provisions of this part.~~

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1 Section 24. Section 626.9925, Florida Statutes, is
2 amended to read:

3 626.9925 Rules.--The commission may adopt rules to
4 administer this act, including rules establishing standards
5 for evaluating advertising by licensees; rules providing for
6 the collection of data, for disclosures to viators ~~or~~
7 ~~purchasers,~~ and for the reporting of life expectancies; and
8 rules defining terms used in this act and prescribing
9 recordkeeping requirements relating to executed viatical
10 settlement contracts ~~and viatical settlement purchase~~
11 ~~agreements.~~

12 Section 25. Section 626.9926, Florida Statutes, is
13 amended to read:

14 626.9926 Rate regulation not authorized.--Nothing in
15 this act shall be construed to authorize the office or
16 department to directly or indirectly regulate the amount paid
17 as consideration for entry into a viatical settlement contract
18 ~~or viatical settlement purchase agreement.~~

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

21 626.9927 Unfair trade practices; cease and desist;
22 injunctions; civil remedy.--

23 (1) A violation of this act is an unfair trade
24 practice under ss. 626.9521 and 626.9541 and is subject to the
25 penalties provided in the insurance code. Part X of this
26 chapter applies to a licensee under this act or a transaction
27 subject to this act as if a viatical settlement contract ~~and a~~
28 ~~viatical settlement purchase agreement~~ were an insurance
29 policy.

30 Section 27. Paragraph (b) of subsection (1) of section
31 626.99275, Florida Statutes, is amended to read:

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1 626.99275 Prohibited practices; penalties.--

2 (1) It is unlawful for any person:

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

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

9 2. Agree to be compensated or receive compensation
10 which is contingent upon providing a specifically designated
11 life expectancy To obtain money or property by means of an
12 ~~untrue statement of a material fact or by any omission to~~
13 ~~state a material fact necessary in order to make the~~
14 ~~statements made, in light of the circumstances under which~~
15 ~~they were made, not misleading; or~~

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

20 (2) A person who violates any provision of this
21 section commits:

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

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

30 (c) A felony of the first degree, punishable as
31 provided in s. 775.082, s. 775.083, or s. 775.084, if the

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1 insurance policy involved is valued at \$100,000 or more.

2 Section 28. Section 626.99278, Florida Statutes, is
3 amended to read:

4 626.99278 Viatical provider anti-fraud plan.--Every
5 licensed viatical settlement provider ~~and viatical settlement~~
6 ~~broker~~ must adopt an anti-fraud plan and file it with the
7 Division of Insurance Fraud of the department ~~on or before~~
8 ~~December 1, 2000~~. Each anti-fraud plan shall include:

9 (1) A description of the procedures for detecting and
10 investigating possible fraudulent acts and procedures for
11 resolving material inconsistencies between medical records and
12 insurance applications.†

13 (2) A description of the procedures for the mandatory
14 reporting of possible fraudulent insurance acts to the
15 Division of Insurance Fraud of the department.†

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

18 (4) A written description or chart outlining the
19 organizational arrangement of the anti-fraud personnel who are
20 responsible for the investigation and reporting of possible
21 fraudulent insurance acts, and investigating unresolved
22 material inconsistencies between medical records and insurance
23 applications.

24 (5) A process by which the provider will perform
25 initial and continuing review of the accuracy of its life
26 expectancies, whether such life expectancies are performed in
27 house or by a contracted life expectancy provider, and ensure
28 compliance with s. 626.99275(1) by its life expectancy
29 providers.

30 Section 29. Section 626.9928, Florida Statutes, is
31 amended to read:

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1 626.9928 Acquisitions.--Acquisition of interest in a
2 viatical settlement provider ~~or viatical settlement broker~~ is
3 subject to s. 628.4615.

4 Section 30. Section 626.99285, Florida Statutes, is
5 amended to read:

6 626.99285 Applicability of insurance code.--In
7 addition to other applicable provisions cited in the insurance
8 code, the office or department, as appropriate, has the
9 authority granted under ss. 624.310, 626.901, and 626.989 to
10 regulate viatical settlement providers, viatical settlement
11 brokers, ~~viatical settlement sales agents~~, viatical settlement
12 contracts, ~~viatical settlement purchase agreements~~, and
13 viatical settlement transactions.

14 Section 31. Section 626.99295, Florida Statutes, is
15 amended to read:

16 626.99295 Grace period.--Any person who, on July 1,
17 2005, is effectuating a viatical settlement purchase agreement
18 made before July 1, 2005, under provisions of law in effect
19 before such date, which viatical settlement purchase agreement
20 was not registered pursuant to chapter 517, must proceed
21 within 30 days after July 1, 2005, to conclude all viatical
22 settlement purchase transactions in progress, provided, if
23 funds have not been matched with a viaticated policy, such
24 funds, or any unmatched portion of such funds, shall be
25 returned to the viatical settlement purchaser within 30 days
26 after July 1, 2005. The provider may not solicit, negotiate,
27 advertise, or effectuate new viatical settlement purchase
28 agreements after July 1, 2005. ~~An unlicensed viatical~~
29 ~~settlement provider or viatical settlement broker that was~~
30 ~~legally transacting business in this state on June 30, 2000,~~
31 ~~may continue to transact such business, in the absence of any~~

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1 ~~orders by the office, department, or the former Department of~~
2 ~~Insurance to the contrary, until the office or department, as~~
3 ~~applicable, approves or disapproves the viatical settlement~~
4 ~~provider's application for licensure if the viatical~~
5 ~~settlement provider or viatical settlement broker filed with~~
6 ~~the former department an application for licensure no later~~
7 ~~than August 1, 2000, and if the viatical settlement provider~~
8 ~~or viatical settlement broker complies with all other~~
9 ~~provisions of this act. Any form for which former department~~
10 ~~approval was required under this part must have been filed by~~
11 ~~August 1, 2000, and may continue to be used until disapproved~~
12 ~~by the office or department.~~

13 Section 32. Sections 626.9917, 626.9918, 626.99235,
14 626.99236, and 626.99277, Florida Statutes, are repealed.

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

18 ===== T I T L E A M E N D M E N T =====

19 And the title is amended as follows:

20 Delete everything before the enacting clause

22 and insert:

23 A bill to be entitled
24 An act relating to viatical settlements;
25 amending s. 517.021, F.S.; revising and
26 providing definitions; creating s. 517.072,
27 F.S.; specifying nonapplication of certain
28 exemptions to viatical settlement investments;
29 specifying the offering of a viatical
30 settlement investment as not an exempt
31 transaction under certain provisions of law;

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1 amending s. 517.081, F.S.; authorizing the
2 Financial Services Commission to adopt
3 additional rules relating to securities
4 registration; authorizing the commission to
5 adopt rules establishing requirements and
6 standards for disclosures and records relating
7 to viatical settlement investments; creating s.
8 517.1215, F.S.; requiring the commission to
9 adopt rules specifying requirements for certain
10 investment advisors; requiring the commission
11 to establish by rule rules of conduct and
12 prohibited business practices for investment
13 advisers and associated persons; providing
14 requirements; creating s. 517.1217, F.S.;
15 authorizing the commission to establish by rule
16 rules of conduct and prohibited business
17 practices for dealers and associated persons;
18 providing requirements; amending s. 624.501,
19 F.S.; including agents making an appointment
20 under certain life insurance agent fee
21 provisions; amending ss. 626.015, 626.112,
22 626.207, and 626.331, F.S., to conform;
23 amending s. 626.611, F.S.; providing an
24 additional ground for compulsory refusal,
25 suspension, or revocation of certain licenses
26 or appointments for transactions relating to
27 viatical settlement contracts; amending s.
28 626.777, F.S., to conform; amending s.
29 626.7845, F.S.; prohibiting certain activities
30 by a person relating to viatical settlement
31 contracts unless he or she is a licensed life

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1 agent; amending s. 626.9911, F.S.; revising
2 definitions; amending s. 626.9912, F.S., to
3 conform; amending s. 626.9913, F.S.; specifying
4 additional requirements for annual statements
5 by viatical settlement provider licensees;
6 providing an alternative bond provision for
7 certain viatical settlement providers for a
8 certain time period; prohibiting certain
9 persons from levying upon certain assets or
10 securities under certain circumstances;
11 requiring annual statements to contain certain
12 information; amending s. 626.9914, F.S.;
13 including the authority to deny a license among
14 the adverse actions the Office of Insurance
15 Regulation may take against a viatical
16 settlement provider for certain actions;
17 amending s. 626.9916, F.S.; revising licensure
18 requirements for viatical settlement brokers;
19 providing for self-appointment; providing for
20 transfers of appointments; providing for
21 termination of licenses; specifying a fiduciary
22 duty of viatical settlement brokers;
23 prohibiting dividing or sharing compensation
24 received by a life agent for certain activities
25 under certain circumstances; amending ss.
26 626.9919, 626.992, and 626.9921, F.S., to
27 conform; amending s. 626.9922, F.S.; specifying
28 office jurisdiction over certain viatical
29 settlement purchase agreements; authorizing the
30 office to refer certain cases to the United
31 States Securities and Exchange Commission for

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1 administrative action under certain
2 circumstances; providing application to life
3 expectancy providers; amending ss. 626.99245,
4 626.9925, 626.9926, and 626.9927, F.S., to
5 conform; amending s. 626.99275, F.S.; revising
6 a prohibited practice to apply to issuing life
7 expectancies under certain circumstances;
8 providing a criminal penalty; amending s.
9 626.99278, F.S.; requiring an anti-fraud plan
10 to include a life expectancy accuracy review
11 process; amending ss. 626.9928 and 626.99285,
12 F.S., to conform; amending s. 626.99295, F.S.;
13 revising application of a grace period for
14 certain viatical settlement purchase
15 agreements; repealing s. 626.9917, F.S.,
16 relating to denial, suspension, revocation, or
17 nonrenewal of viatical settlement broker
18 licenses; repealing s. 626.9918, F.S., relating
19 to effect of suspension or revocation of
20 viatical settlement broker licenses; repealing
21 s. 626.99235, F.S., relating to disclosures to
22 viatical settlement purchasers; repealing s.
23 626.99236, F.S., relating to further
24 disclosures to viatical settlement purchasers;
25 repealing s. 626.99277, F.S., relating to false
26 representations; providing an effective date.

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