

Bill No. CS for SB 2412

Barcode 750484

	CHAMBER ACTION	
<u>Senate</u>		<u>House</u>

1	1/F/2R	.
2	04/27/2005 04:46 PM	.
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9		.
10		.

11 Senator Posey moved the following amendment:

12

13 **Senate Amendment (with title amendment)**

14 Delete everything after the enacting clause

15  
16 and insert:

17 Section 1. Section 626.99271, Florida Statutes, is  
18 created to read:

19 626.99271 Viatical fraudulent prevention and  
20 control.--

21 (1) FRAUDULENT VIATICAL SETTLEMENT ACTS; INTERFERENCE  
22 AND PARTICIPATION OF CONVICTED FELONS PROHIBITED.--

23 (a) A person may not commit a fraudulent viatical  
24 settlement act.

25 (b) A person may not knowingly or intentionally  
26 interfere with the enforcement of this act or investigations  
27 of suspected or actual violation of this section.

28 (c) A person in the business of viatical settlements  
29 may not knowingly or intentionally permit any person convicted  
30 of a felony involving dishonesty or breach of trust to  
31 participate in the business of viatical settlements.

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1       (2) FRAUD WARNING REQUIRED.--

2       (a) Viatical settlement contracts and purchase  
3 agreement forms and applications for viatical settlements,  
4 regardless of the form of transmission, must contain the  
5 following statement or a substantially similar statement:

6  
7       Any person who knowingly presents false  
8 information in an application for insurance, a  
9 viatical settlement contract, or a viatical  
10 settlement purchase agreement may be subject to  
11 fin.

12  
13       (b) The lack of a statement as required in paragraph  
14 (a) does not constitute a defense in any prosecution for a  
15 fraudulent viatical settlement act.

16       (3) MANDATORY REPORTING OF FRAUDULENT VIATICAL  
17 SETTLEMENT ACTS.--

18       (a) A person who engages in the business of viatical  
19 settlements who knows or has a reasonable belief that a  
20 fraudulent viatical settlement act is being, will be, or has  
21 been committed must provide to the Financial Services  
22 Commission the information required by, and in a manner  
23 prescribed by, the commission.

24       (b) Any other person who knows or has a reasonable  
25 belief that a fraudulent viatical settlement act is being,  
26 will be, or has been committed may provide to the commission  
27 the information required by, and in a manner prescribed by,  
28 the commission.

29       (4) IMMUNITY FROM LIABILITY.--

30       (a) Civil liability may not be imposed on and a cause  
31 of action may not arise from a person furnishing information

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1 concerning suspected, anticipated, or completed fraudulent  
2 acts with respect to viatical settlements or suspected or  
3 completed fraudulent insurance acts if the information is  
4 provided to or received from:

5 1. The Financial Services Commission or the  
6 commission's employees, agents, or representatives;

7 2. Federal, state, or local law enforcement or  
8 regulatory officials or their employees, agents, or  
9 representatives;

10 3. A person involved in the prevention and detection  
11 of fraudulent viatical settlement acts or the agent, employee  
12 or representative of the person;

13 4. The National Association of Insurance Commissions  
14 (NAIC), National Association of Securities Dealers (NASD), the  
15 North American Securities Administrators Association (NASAA),  
16 or their employees, agents, or representatives, or other  
17 regulatory body overseeing life insurance, viatical  
18 settlements, securities, or investment fraud; or

19 5. The life insurer that issued the life insurance  
20 policy covering the life of the insured.

21 (b) Paragraph (a) does not apply to statements made  
22 with actual malice. In an action brought against a person for  
23 filing a report or furnishing other information concerning a  
24 fraudulent viatical settlement act or a fraudulent insurance  
25 act, the party bringing the action must plead specifically any  
26 allegation that paragraph (a) does not apply because the  
27 person filing the report or furnishing the information did so  
28 with actual malice.

29 (c) A person identified in paragraph (a) is entitled  
30 to an award of attorney's fees and costs if he or she is the  
31 prevailing party in a civil cause of action for libel,

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1 slander, or any other relevant tort arising out of activities  
 2 in carrying out this act and the party bringing the action was  
 3 not substantially justified in doing so. For purposes of this  
 4 section, a proceeding is "substantially justified" if it had a  
 5 reasonable basis in law or fact at the time that it was  
 6 initiated.

7 (d) This section does not abrogate or modify common  
 8 law or statutory privileges or immunities enjoyed by a person  
 9 described in paragraph (a).

10 (5) OTHER LAW ENFORCEMENT OR REGULATORY

11 AUTHORITY.--This act does not:

12 (a) Preempt the authority or relieve the duty of other  
 13 law enforcement or regulatory agencies to investigate,  
 14 examine, or prosecute suspected violation of law;

15 (b) Prevent or prohibit a person from voluntarily  
 16 disclosing information concerning viatical settlement fraud to  
 17 a law enforcement or regulatory agency other than the  
 18 insurance department; or

19 (c) Limit the powers granted elsewhere by the laws of  
 20 this state to the commission or an insurance fraud unit to  
 21 investigate and examine possible violations of law and to take  
 22 appropriate action against wrongdoers.

23 (6) VIATICAL SETTLEMENT ANTI-FRAUD

24 INITIATIVES.--Viatical settlement providers and viatical  
 25 settlement brokers must have active anti-fraud initiatives  
 26 reasonably calculated to detect, prosecute, and prevent  
 27 fraudulent viatical settlement acts. The Financial Services  
 28 Commission may order, or a licensee may request and the  
 29 commission may grant, such modifications of the following  
 30 required initiatives as necessary to ensure an effective  
 31 anti-fraud program. The modifications may be more or less

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1 restrictive than the required initiatives so long as the  
2 modifications may reasonably be expected to accomplish the  
3 purpose of this section. Anti-fraud initiatives must include:

4 (a) Fraud investigators, who may be viatical  
5 settlement provider or viatical settlement broker employees or  
6 independent contractors; and

7 (b) An anti-fraud plan that must be submitted to the  
8 commission. The anti-fraud plan must include, but not be  
9 limited to, a description of:

10 1. The procedures for detecting and investigating  
11 possible fraudulent viatical settlement acts and procedures  
12 for resolving material inconsistencies between medical records  
13 and insurance applications;

14 2. The procedures for reporting possible fraudulent  
15 viatical settlement acts to the commission;

16 3. The plan for anti-fraud education and training of  
17 underwriters and other personnel; and

18 4. The chart outlining the organizational arrangement  
19 of the anti-fraud personnel who are responsible for the  
20 investigation and reporting of possible fraudulent viatical  
21 settlement acts and investigating unresolved material  
22 inconsistencies between medical records and insurance  
23 applications.

24 Section 2. Section 626.99279, Florida Statutes, is  
25 created to read:

26 626.99279 Advertising for viatical settlements and  
27 viatical settlement purchase agreements.--The Legislature  
28 intends this section to provide prospective viators and  
29 viatical settlement purchasers with clear and unambiguous  
30 statements in the advertisement of viatical settlements and to  
31 ensure the clear, truthful, and adequate disclosure of the

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1 benefits, risks, limitations, and exclusions of any viatical  
 2 settlement contract or viatical settlement purchase agreement  
 3 bought or sold. The intent of the Legislature is to be  
 4 accomplished by establishing guidelines and standards of  
 5 permissible and impermissible conduct in the advertising of  
 6 viatical settlements. These standards and guidelines are to  
 7 ensure that product descriptions are presented in a manner  
 8 that prevents unfair, deceptive, or misleading advertising and  
 9 is conducive to accurate presentation and description of  
 10 viatical settlements through the advertising media and  
 11 material used by viatical settlement licensees.

12 (1) This section applies to any advertising of  
 13 viatical settlement contracts, viatical purchase agreements,  
 14 or related products or services intended for dissemination in  
 15 this state, including Internet advertising viewed by persons  
 16 located in this state. When disclosure requirements are  
 17 established under federal regulation, this section shall be  
 18 interpreted to minimize or eliminate conflict with federal  
 19 regulation whenever possible.

20 (2) Every viatical settlement licensee shall establish  
 21 and at all times maintain a system of control over the  
 22 content, form, and method of dissemination of all  
 23 advertisements of its contracts, products, and services. All  
 24 advertisements, regardless of by whom written, created,  
 25 designed, or presented, are the responsibility of the viatical  
 26 settlement licensee as well as the individual who created or  
 27 presented the advertisement. A system of control must include  
 28 regular routine notification, at least once a year, to agents  
 29 and others authorized by the viatical settlement licensee who  
 30 disseminate advertisements of the requirements and procedures  
 31 for approval before the use of any advertisements not

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1 furnished by the viatical settlement licensee.

2 (3) Advertisements must be truthful and not misleading  
3 in fact or by implication. The form and content of an  
4 advertisement of a viatical settlement contract or viatical  
5 settlement purchase agreement, product, or service must be  
6 sufficiently complete and clear so as to avoid deception. It  
7 may not have the capacity or tendency to mislead or deceive.  
8 Whether an advertisement has the capacity or tendency to  
9 mislead or deceive shall be determined by the Financial  
10 Services Commission from the overall impression that the  
11 advertisement may be reasonably expected to create upon a  
12 person of average education or intelligence within the segment  
13 of the public to which it is directed.

14 (4) Certain viatical settlement advertisements are  
15 deemed false and misleading on their face and are prohibited.  
16 False and misleading viatical settlement advertisements  
17 include, but are not limited to, the following  
18 representations:

19 (a) "Guaranteed," "fully secured," "100 percent  
20 secured," "fully insured," "secure," "safe," "backed by rated  
21 insurance companies," "backed by federal law," "backed by  
22 state law," "backed by state guaranty funds," or similar  
23 representations;

24 (b) "No risk," "minimal risk," "low risk," "no  
25 speculation," "no fluctuation," or similar representations;

26 (c) "Qualified or approved for individual retirement  
27 accounts (IRAs), Roth IRAs, 401(k) plans, simplified employee  
28 pensions (SEP), 403(b), Keogh plans, TSA, other retirement  
29 account rollovers," "tax deferred," or similar  
30 representations;

31 (d) Use of the word "guaranteed" to describe the fixed

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1 return, annual return, principal, earnings, profits,  
2 investment, or similar representations;

3 (e) "No sales charges or fees" or similar  
4 representations;

5 (f) "High yield," "superior return," "excellent  
6 return," "high return," "quick profit," or similar  
7 representations; and

8 (g) Purported favorable representations or  
9 testimonials about the benefits of viatical settlement  
10 contracts or viatical settlement purchase agreements as an  
11 investment, taken out of context from newspapers, trade  
12 papers, journals, radio and television programs, and all other  
13 forms of print and electronic media.

14 (5) The information required to be disclosed under  
15 this section may not be minimized, rendered obscure, or  
16 presented in an ambiguous fashion or intermingled with the  
17 text of the advertisement so as to be confusing or misleading.

18 (a) An advertisement may not:

19 1. Omit material information or use words, phrases,  
20 statements, references, or illustrations if the omission or  
21 use has the capacity, tendency, or effect of misleading or  
22 deceiving viators, purchasers, or prospective purchasers as to  
23 the nature or extent of any benefit, loss covered, premium  
24 payable, or state or federal tax consequence. The fact that  
25 the viatical settlement contract or viatical settlement  
26 purchase agreement offered is made available for inspection  
27 before consummation of the sale, that an offer is made to  
28 refund the payment if the viator is not satisfied, or that the  
29 viatical settlement contract or viatical settlement purchase  
30 agreement includes a "free look" period that satisfies or  
31 exceeds legal requirements does not remedy misleading



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1 statements.

2       2. Use the name or title of a life insurance company  
3 or a life insurance policy unless the advertisement has been  
4 approved by the insurer.

5       3. Represent that premium payments will not be  
6 required to be paid on the life insurance policy that is the  
7 subject of a viatical settlement contract or viatical  
8 settlement purchase agreement in order to maintain that  
9 policy, unless that is the fact.

10       4. State or imply that interest charged on an  
11 accelerated death benefit or a policy loan is unfair,  
12 inequitable, or in any manner an incorrect or improper  
13 practice.

14       (b) The words "free," "no cost," "without cost," "no  
15 additional cost," and "at no extra cost" or words of similar  
16 import may not be used with respect to any benefit or service  
17 unless true. An advertisement may specify the charge for a  
18 benefit or a service or may state that a charge is included in  
19 the payment or use other appropriate language.

20       (c) Testimonials, appraisals, or analysis used in  
21 advertisements must be genuine; represent the current opinion  
22 of the author; be applicable to the viatical settlement  
23 contract or viatical settlement purchase agreement, product,  
24 or service advertised, if any; and be accurately reproduced  
25 with sufficient completeness to avoid misleading or deceiving  
26 prospective viators or purchasers as to the nature or scope of  
27 the testimonials, appraisal, analysis, or endorsement. In  
28 using testimonials, appraisals, or analysis, the viatical  
29 settlement licensee makes as its own all the statements  
30 contained therein, and the statements are subject to all the  
31 provisions of this section.

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1           1. If the individual making a testimonial, appraisal,  
 2 analysis, or endorsement has a financial interest in the  
 3 viatical settlement provider or related entity as a  
 4 stockholder, director, officer, employee, or otherwise, or  
 5 receives any benefit directly or indirectly other than  
 6 required union scale wages, that fact must be prominently  
 7 disclosed in the advertisement.

8           2. An advertisement may not state or imply that a  
 9 viatical settlement contract or viatical settlement purchase  
 10 agreement, benefit, or service has been approved or endorsed  
 11 by a group of individuals, society, association, or other  
 12 organization unless that is the fact and unless any  
 13 relationship between an organization and the viatical  
 14 settlement licensee is disclosed. If the entity making the  
 15 endorsement or testimonial is owned, controlled, or managed by  
 16 the viatical settlement licensee, or receives any payment or  
 17 other consideration from the viatical settlement licensee for  
 18 making an endorsement or testimonial, that fact must be  
 19 disclosed in the advertisement.

20           3. When an endorsement refers to benefits received  
 21 under a viatical settlement contract or viatical settlement  
 22 purchase agreement, all pertinent information must be retained  
 23 for a period of 5 years after its use.

24           (6) An advertisement may not contain statistical  
 25 information unless it accurately reflects recent and relevant  
 26 facts. The source of all statistics used in an advertisement  
 27 must be identified.

28           (7) An advertisement may not disparage insurers,  
 29 viatical settlement providers, viatical settlement brokers,  
 30 viatical settlement investment agents, insurance producers,  
 31 policies, services, or methods of marketing.

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1       (8) The name of the viatical settlement licensee must  
2 be clearly identified in all advertisements about the licensee  
3 or its viatical settlement contracts or viatical settlement  
4 purchase agreements, products, or services, and if any  
5 specific viatical settlement contract or viatical settlement  
6 purchase agreement is advertised, the viatical settlement  
7 contract or viatical settlement purchase agreement shall be  
8 identified either by form number or some other appropriate  
9 description. If an application is part of the advertisement,  
10 the name of the viatical settlement provider must be shown on  
11 the application.

12       (9) An advertisement may not use a trade name, group  
13 designation, name of the parent company of a viatical  
14 settlement licensee, name of a particular division of the  
15 viatical settlement licensee, service mark, slogan, symbol, or  
16 other device or reference without disclosing the name of the  
17 viatical settlement licensee if the advertisement would have  
18 the capacity or tendency to mislead or deceive as to the true  
19 identity of the viatical settlement licensee or to create the  
20 impression that a company other than the viatical settlement  
21 licensee would have any responsibility for the financial  
22 obligation under a viatical settlement contract or viatical  
23 settlement purchase agreement.

24       (10) An advertisement may not use any combination of  
25 words, symbols, or physical materials that by their content,  
26 phraseology, shape, color, or other characteristics are so  
27 similar to a combination of words, symbols, or physical  
28 materials used by a government program or agency, or otherwise  
29 appear to be of such nature, that they tend to mislead  
30 prospective viators or purchasers into believing that the  
31 solicitation is in some manner connected with a government

1 program or agency.

2 (11) An advertisement may state that a viatical  
3 settlement licensee is licensed in the state where the  
4 advertisement appears provided that it does not exaggerate  
5 that fact or suggest or imply that competing viatical  
6 settlement licensees may not be so licensed. The advertisement  
7 may ask the audience to consult the licensee's website or  
8 contact the Department of Insurance to find out if the state  
9 requires licensing and, if so, whether the viatical settlement  
10 provider, viatical settlement broker, or viatical settlement  
11 investment agent is licensed.

12 (12) An advertisement may not create the impression  
13 that the viatical settlement provider, its financial condition  
14 or status, the payment of its claims, or the merits,  
15 desirability, or advisability of its viatical settlement  
16 contracts or viatical settlement purchase agreement forms are  
17 recommended or endorsed by any government entity.

18 (13) The name of the actual licensee must be stated in  
19 all of its advertisements. An advertisement may not use a  
20 trade name, any group designation, the name of any affiliate  
21 or controlling entity of the licensee, service mark, slogan,  
22 symbol, or other device in a manner that would have the  
23 capacity or tendency to mislead or deceive as to the true  
24 identity of the actual licensee or create the false impression  
25 that an affiliate or controlling entity would have any  
26 responsibility for the financial obligation of the licensee.

27 (14) An advertisement may not directly or indirectly  
28 create the impression that any division or agency of the state  
29 or of the United States Government endorses, approves, or  
30 favors:

31 (a) Any viatical settlement licensee or its business

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1 practices or methods of operation;

2 (b) The merits, desirability, or advisability of any  
3 viatical settlement contract or viatical settlement purchase  
4 agreement;

5 (c) Any viatical settlement contract or viatical  
6 settlement purchase agreement; or

7 (d) Any life insurance policy or life insurance  
8 company.

9 (15) If the advertiser emphasizes the speed with which  
10 the viatication will occur, the advertising must disclose the  
11 average time frame from completed application to the date of  
12 offer and from acceptance of the offer to receipt of the funds  
13 by the viator.

14 (16) If the advertising emphasizes the dollar amounts  
15 available to viators, the advertising must disclose the  
16 average purchase price as a percent of face value obtained by  
17 viators contracting with the licensee during the past 6  
18 months.

19 Section 3. Subsection (2) of section 626.99235,  
20 Florida Statutes, is amended to read:

21 626.99235 Disclosures to viatical settlement  
22 purchasers; misrepresentations.--

23 (2) A viatical settlement provider or its viatical  
24 settlement investment agent must provide the viatical  
25 settlement purchaser with at least the following disclosures  
26 before the date the viatical settlement purchase agreement is  
27 signed by all parties. The disclosures must be conspicuously  
28 displayed in any viatical purchase contract or in a separate  
29 document signed by the viatical settlement purchaser and  
30 viatical settlement provider or viatical settlement investment  
31 agent, and must make the following disclosure to the viatical

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1 settlement purchaser:

2       (a) That the purchaser will receive no returns  
3 including dividends or interest until the insured dies.

4       (b) That the actual annual rate of return on a  
5 viatical settlement contract is dependent upon an accurate  
6 projection of the insured's life expectancy and the actual  
7 date of the insured's death and that an annual "guaranteed"  
8 rate of return is not determinable.

9       (c) That the viaticated life insurance contract should  
10 not be considered a liquid purchase since it is impossible to  
11 predict the exact timing of its maturity and the funds  
12 probably are not available until the death of the insured and  
13 that there is no established secondary market for resale of  
14 these products by the purchaser.

15       (d) That the purchaser may lose all benefits or may  
16 receive substantially reduced benefits if the insurer goes out  
17 of business during the term of the viatical investment.

18       (e) That the purchaser is responsible for payment of  
19 the insurance premium or other costs related to the policy, if  
20 required by the terms of the viatical purchase agreement; that  
21 the payments may reduce the purchaser's return; and, if a  
22 party other than the purchaser is responsible for the payment,  
23 the name and address of that party.

24       (f) That the purchaser is responsible for payment of  
25 the insurance premiums or other costs related to the policy if  
26 the insured returns to health and the amount of such premiums,  
27 if applicable.

28       (g) The name and address of any person providing  
29 escrow services and the relationship to the broker.

30       (h) The amount of any trust fees or other expenses to  
31 be charged to the viatical settlement purchaser.

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1       (i) Whether the purchaser is entitled to a refund of  
 2 all or part of his or her investment under the settlement  
 3 contract if the policy is later determined to be null and  
 4 void.

5       (j) That group policies may contain limitations or  
 6 caps in the conversion rights; that additional premiums may  
 7 have to be paid if the policy is converted; the party  
 8 responsible for the payment of the additional premiums; and,  
 9 if a group policy is terminated and replaced by another group  
 10 policy, that there may be no right to convert the original  
 11 coverage.

12       (k) The risks associated with policy contestability,  
 13 including, but not limited to, the risk that the purchaser  
 14 will have no claim or only a partial claim to death benefits  
 15 if the insurer rescinds the policy within the contestability  
 16 period.

17       (l) Whether the purchaser will be the owner of the  
 18 policy in addition to being the beneficiary, and if the  
 19 purchaser is the beneficiary only and not also the owner, the  
 20 special risks associated with that status, including, but not  
 21 limited to, the risk that the beneficiary may be changed or  
 22 the premium may not be paid.

23       (m) The experience and qualifications of the person  
 24 who determines the life expectancy of the insured, such as  
 25 in-house staff, independent physicians, and specialty firms  
 26 that weigh medical and actuarial data; the information this  
 27 projection is based on; and the relationship of the projection  
 28 maker to the viatical settlement provider, if any.

29  
 30 Disclosure to an investor must include distribution of a  
 31 brochure describing the process of investment in viatical

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1 settlements. The NAIC's form for the brochure must be used  
 2 unless one is developed by the commission. The viatical  
 3 settlement provider and the viatical settlement sales agent,  
 4 themselves or through another person, shall provide in writing  
 5 the following disclosures to any viatical settlement purchaser  
 6 or purchaser prospect:

7       (a) ~~That the return represented as being available~~  
 8 ~~under the viatical settlement purchase agreement is directly~~  
 9 ~~tied to the projected life span of one or more insureds.~~

10       (b) ~~If a return is represented, the disclosure shall~~  
 11 ~~indicate the projected life span of the insured or insureds~~  
 12 ~~whose life or lives are tied to the return.~~

13       (c) ~~If required by the terms of the viatical~~  
 14 ~~settlement purchase agreement, that the viatical settlement~~  
 15 ~~purchaser shall be responsible for the payment of insurance~~  
 16 ~~premiums on the life of the insured, late or surrender fees,~~  
 17 ~~or other costs related to the life insurance policy on the~~  
 18 ~~life of the insured or insureds which may reduce the return.~~

19       (d) ~~The amount of any trust fees, commissions,~~  
 20 ~~deductions, or other expenses, if any, to be charged to the~~  
 21 ~~viatical settlement purchaser.~~

22       (e) ~~The name and address of the person responsible for~~  
 23 ~~tracking the insured.~~

24       (f) ~~That group policies may contain limitations or~~  
 25 ~~caps in the conversion rights, that additional premiums may~~  
 26 ~~have to be paid if the policy is converted, and that the party~~  
 27 ~~responsible for the payment of such additional premiums shall~~  
 28 ~~be identified.~~

29       (g) ~~That the life expectancy and rate of return are~~  
 30 ~~only estimates and cannot be guaranteed.~~

31       (h) ~~That the purchase of a viatical settlement~~



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1 ~~contract should not be considered a liquid purchase, since it~~  
2 ~~is impossible to predict the exact timing of its maturity and~~  
3 ~~the funds may not be available until the death of the insured.~~

4 ~~(i) The name and address of the person with the~~  
5 ~~responsibility for paying the premium until the death of the~~  
6 ~~insured.~~

7  
8 ~~The written disclosure required under this subsection shall be~~  
9 ~~conspicuously displayed in any viatical settlement purchase~~  
10 ~~agreement, and in any solicitation material furnished to the~~  
11 ~~viatical settlement purchaser by such viatical settlement~~  
12 ~~provider, related provider trust, or person, and shall be in~~  
13 ~~contrasting color and in not less than 10-point type or no~~  
14 ~~smaller than the largest type on the page if larger than~~  
15 ~~10-point type. The commission may adopt by rule the disclosure~~  
16 ~~form to be used. The disclosures need not be furnished in an~~  
17 ~~invitation to inquire, the objective of which is to create a~~  
18 ~~desire to inquire further about entering into a viatical~~  
19 ~~settlement purchase agreement. The invitation to inquire may~~  
20 ~~not quote rates of return, may not include material attendant~~  
21 ~~to the execution of any specific viatical settlement purchase~~  
22 ~~agreement, and may not relate to any specific viator.~~

23 Section 4. Subsection (1) of section 626.99236,  
24 Florida Statutes, is amended to read:

25 626.99236 Further disclosures to viatical settlement  
26 purchasers.--

27 (1) A viatical settlement provider or its viatical  
28 settlement investment agent must provide the viatical  
29 settlement purchaser with at least the following disclosures  
30 no later than at the time of the assignment, transfer, or sale  
31 of all or a portion of an insurance policy. The disclosures

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1 must be contained in a document signed by the viatical  
2 settlement purchaser and viatical settlement provider or  
3 viatical settlement investment agent, and the document must  
4 make the following disclosures to the viatical settlement  
5 purchaser:

6 (a) All the life expectancy certifications obtained by  
7 the provider in the process of determining the price paid to  
8 the viator.

9 (b) Whether premium payments or other costs related to  
10 the policy have been escrowed and if escrowed, the date upon  
11 which the escrowed funds will be depleted and whether the  
12 purchaser will be responsible for payment of premiums  
13 thereafter and, if so, the amount of the premiums.

14 (c) Whether premium payments or other costs related to  
15 the policy have been waived and, if waived, whether the  
16 investor will be responsible for payment of the premiums if  
17 the insurer that wrote the policy terminates the waiver after  
18 purchase and the amount of those premiums.

19 (d) The type of policy offered or sold, i.e. whole  
20 life, term life, universal life, or a group policy  
21 certificate; any additional benefits contained in the policy;  
22 and the current status of the policy.

23 (e) If the policy is term insurance, the special risks  
24 associated with term insurance, including, but not limited to,  
25 the purchaser's responsibility for additional premiums if the  
26 viator continues the term policy at the end of the current  
27 term.

28 (f) Whether the policy is contestable.

29 (g) Whether the insurer that wrote the policy has any  
30 additional rights that could negatively affect or extinguish  
31 the purchaser's rights under the viatical settlement contract,

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1 what these rights are, and under what conditions these rights  
2 are activated.

3 (h) The name and address of the person responsible for  
4 monitoring the insured's condition and a description of how  
5 often the monitoring of the insured's condition is done, how  
6 the date of death is determined, and how and when this  
7 information will be transmitted to the purchaser. No later  
8 than 5 days prior to the assignment, transfer, sale, devise,  
9 or bequest of the death benefit or ownership of all or a  
10 portion of the insurance policy or certificate of insurance to  
11 the purchaser, the viatical settlement provider and the  
12 viatical settlement sales agent, themselves or through another  
13 person, shall provide in writing the following disclosures to  
14 any viatical settlement purchaser:

15 (a) All the life expectancy certifications obtained by  
16 the provider.

17 (b) The name and address of the insurance company, the  
18 policy number, and the date of original issue of the  
19 viaticated policy.

20 (c) The experience and qualifications of the person  
21 issuing the life expectancy certification, and that person's  
22 relationship to the viatical settlement provider, the viatical  
23 settlement broker, the viatical settlement sales agent, and  
24 the viator.

25 (d) The name and address of any person providing  
26 escrow services, and that person's relationship to the  
27 viatical settlement provider, the viatical settlement broker,  
28 the viatical settlement sales agent, and the viator.

29 (e) The type of life insurance policy offered or sold,  
30 including a statement as to whether the policy is whole life,  
31 term life, universal life, or a group policy certificate; a

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1 ~~statement as to whether the policy is in lapse status or has~~  
 2 ~~lapsed in the last 2 years; and a statement as to whether the~~  
 3 ~~purchaser is entitled to benefits contained in the policy~~  
 4 ~~other than the death benefit of the policy.~~

5 ~~(f) The procedure to be used by the provider to~~  
 6 ~~provide the status of the health condition of the insured to a~~  
 7 ~~purchaser.~~

8 Section 5. This act shall take effect July 1, 2005.

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

12 And the title is amended as follows:

13 Delete everything before the enacting clause

14

15 and insert:

16 A bill to be entitled  
 17 An act relating to viatical settlements;  
 18 creating s. 626.99271, F.S.; requiring that a  
 19 fraud warning be included in viatical  
 20 settlement agreements; requiring certain  
 21 persons to report viatical fraud; providing for  
 22 immunity from civil liability for persons who  
 23 report viatical fraud; providing that the act  
 24 does not preempt limit enforcement by other  
 25 agencies; requiring viatical settlement  
 26 providers to initiate anti-fraud programs and  
 27 to submit an anti-fraud plan to the Financial  
 28 Services Commission; providing for the contents  
 29 of the anti-fraud plan; creating s. 626.99279,  
 30 F.S.; providing that advertisements of viatical  
 31 settlement agreements must be truthful;

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1 prohibiting certain specified statements that  
2 are misleading; prohibiting advertising from  
3 containing or excluding certain information;  
4 amending s. 626.99235, F.S.; providing that  
5 certain disclosures be made before the  
6 agreement documents are signed; amending s.  
7 626.99236, F.S.; requiring that the viatical  
8 settlement documents contain certain  
9 disclosures; providing an effective date.

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