

1 A bill to be entitled
2 An act relating to viatical settlements;
3 amending s. 517.021, F.S.; revising and
4 providing definitions; creating s. 517.072,
5 F.S.; specifying nonapplication of certain
6 exemptions to viatical settlement investments;
7 specifying the offering of a viatical
8 settlement investment as not an exempt
9 transaction under certain provisions of law;
10 amending s. 517.081, F.S.; authorizing the
11 Financial Services Commission to adopt
12 additional rules relating to securities
13 registration; authorizing the commission to
14 adopt rules establishing requirements and
15 standards for disclosures and records relating
16 to viatical settlement investments; creating s.
17 517.1215, F.S.; requiring the commission to
18 adopt rules specifying requirements for certain
19 investment advisors; requiring the commission
20 to establish by rule rules of conduct and
21 prohibited business practices for investment
22 advisers and associated persons; providing
23 requirements; creating s. 517.1217, F.S.;
24 authorizing the commission to establish by rule
25 rules of conduct and prohibited business
26 practices for dealers and associated persons;
27 providing requirements; amending s. 624.501,
28 F.S.; including agents making an appointment
29 under certain life insurance agent fee
30 provisions; amending ss. 626.015, 626.112,
31 626.207, and 626.331, F.S., to conform;

1 | amending s. 626.611, F.S.; providing an
2 | additional ground for compulsory refusal,
3 | suspension, or revocation of certain licenses
4 | or appointments for transactions relating to
5 | viatical settlement contracts; amending s.
6 | 626.777, F.S., to conform; amending s.
7 | 626.7845, F.S.; prohibiting certain activities
8 | by a person relating to viatical settlement
9 | contracts unless he or she is a licensed life
10 | agent; amending s. 626.9911, F.S.; revising
11 | definitions; amending s. 626.9912, F.S., to
12 | conform; amending s. 626.9913, F.S.; specifying
13 | additional requirements for annual statements
14 | by viatical settlement provider licensees;
15 | providing an alternative bond provision for
16 | certain viatical settlement providers for a
17 | certain time period; prohibiting certain
18 | persons from levying upon certain assets or
19 | securities under certain circumstances;
20 | amending s. 626.9914, F.S.; including the
21 | authority to deny a license among the adverse
22 | actions the Office of Insurance Regulation may
23 | take against a viatical settlement provider for
24 | certain actions; amending s. 626.9916, F.S.;
25 | revising licensure requirements for viatical
26 | settlement brokers; providing for
27 | self-appointment; providing for transfers of
28 | appointments; providing for termination of
29 | licenses; specifying a fiduciary duty of
30 | viatical settlement brokers; prohibiting
31 | dividing or sharing compensation received by a

1 | life agent for certain activities under certain
2 | circumstances; creating s. 626.99175, F.S.;
3 | requiring registration to operate as a life
4 | expectancy provider; providing registration for
5 | requirements; requiring certain application
6 | information; requiring registered life
7 | expectancy providers to periodically file
8 | audits with the office; providing audit
9 | requirements; authorizing certain subsidiaries
10 | of life expectancy providers to operate as a
11 | provider under certain circumstances;
12 | prohibiting certain providers, brokers, and
13 | agents from owning or being an officer,
14 | director, or employee of a life expectancy
15 | provider; requiring providers to provide the
16 | office with advance notice of certain changes;
17 | requiring providers to retain copies of certain
18 | information and documents; providing an
19 | exception; providing procedures for approval or
20 | denial of applications; specifying grounds for
21 | denial of an application; authorizing the
22 | office to assess administrative fines under
23 | certain circumstances; authorizing the office
24 | to place a provider on probation for a certain
25 | period; specifying certain activities
26 | violations; amending ss. 626.9919, 626.992, and
27 | 626.9921, F.S., to conform; amending s.
28 | 626.9922, F.S.; specifying office jurisdiction
29 | over certain viatical settlement purchase
30 | agreements; authorizing the office to refer
31 | certain cases to the United States Securities

1 and Exchange Commission for administrative
2 action under certain circumstances; providing
3 application to life expectancy providers;
4 amending ss. 626.99245, 626.9925, 626.9926, and
5 626.9927, F.S., to conform; amending s.
6 626.99275, F.S.; revising prohibited practices
7 to apply to issuing life expectancies and
8 change a viator's residency for certain
9 purposes; providing a criminal penalty;
10 amending s. 626.99278, F.S.; providing for
11 application to registered life expectancy
12 providers; requiring an anti-fraud plan to
13 include a description of procedures used to
14 perform life expectancy accuracy reviews;
15 amending ss. 626.9928 and 626.99285, F.S., to
16 conform; amending s. 626.99295, F.S.; revising
17 application of a grace period for certain
18 viatical settlement purchase agreements;
19 repealing s. 626.9917, F.S., relating to
20 denial, suspension, revocation, or nonrenewal
21 of viatical settlement broker licenses;
22 repealing s. 626.9918, F.S., relating to effect
23 of suspension or revocation of viatical
24 settlement broker licenses; repealing s.
25 626.99235, F.S., relating to disclosures to
26 viatical settlement purchasers; repealing s.
27 626.99236, F.S., relating to further
28 disclosures to viatical settlement purchasers;
29 repealing s. 626.99277, F.S., relating to false
30 representations; providing an effective date.
31

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

2

3 Section 1. Subsections (19) and (21) of section
4 517.021, Florida Statutes, are renumbered as subsections (20)
5 and (22), respectively, present subsection (20) is renumbered
6 as subsection (21) and amended, and subsections (19) and (23)
7 are added to that section, to read:

8 517.021 Definitions.--When used in this chapter,
9 unless the context otherwise indicates, the following terms
10 have the following respective meanings:

11 (19) "Qualified institutional buyer" means any
12 qualified institutional buyer, as defined in United States
13 Securities and Exchange Commission Rule 144A, 17 C.F.R.
14 230.144A(a), under the Securities Act of 1933, as amended, or
15 any foreign buyer that satisfies the minimum financial
16 requirements set forth in such rule.

17 ~~(21)~~~~(20)~~ "Security" includes any of the following:

- 18 (a) A note.
- 19 (b) A stock.
- 20 (c) A treasury stock.
- 21 (d) A bond.
- 22 (e) A debenture.
- 23 (f) An evidence of indebtedness.
- 24 (g) A certificate of deposit.
- 25 (h) A certificate of deposit for a security.
- 26 (i) A certificate of interest or participation.
- 27 (j) A whiskey warehouse receipt or other commodity
28 warehouse receipt.
- 29 (k) A certificate of interest in a profit-sharing
30 agreement or the right to participate therein.
- 31

1 (l) A certificate of interest in an oil, gas,
2 petroleum, mineral, or mining title or lease or the right to
3 participate therein.

4 (m) A collateral trust certificate.

5 (n) A reorganization certificate.

6 (o) A preorganization subscription.

7 (p) Any transferable share.

8 (q) An investment contract.

9 (r) A beneficial interest in title to property,
10 profits, or earnings.

11 (s) An interest in or under a profit-sharing or
12 participation agreement or scheme.

13 (t) Any option contract which entitles the holder to
14 purchase or sell a given amount of the underlying security at
15 a fixed price within a specified period of time.

16 (u) Any other instrument commonly known as a security,
17 including an interim or temporary bond, debenture, note, or
18 certificate.

19 (v) Any receipt for a security, or for subscription to
20 a security, or any right to subscribe to or purchase any
21 security.

22 (w) A viatical settlement investment.

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

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

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

5 (c) The transfer or assignment of a viaticated policy
6 from a licensed viatical settlement provider to another
7 licensed viatical settlement provider, a related provider
8 trust, a financing entity, or a special purpose entity, as
9 those terms are defined in s. 626.9911, or to a contingency
10 insurer provided that such transfer or assignment is not the
11 direct or indirect promotion of any scheme or enterprise with
12 the intent of violating or evading any provision of this
13 chapter.

14 (d) The transfer or assignment of a viaticated policy
15 to a bank, trust company, savings institution, insurance
16 company, dealer, investment company as defined in the
17 Investment Company Act of 1940, pension or profit-sharing
18 trust, or qualified institutional buyer as defined in United
19 States Securities and Exchange Commission Rule 144A, 17 C.F.R.
20 230.144A(a), provided such transfer or assignment is not for
21 the direct or indirect promotion of any scheme or enterprise
22 with the intent of violating or evading any provision of this
23 chapter.

24 (e) The transfer or assignment of a viaticated policy
25 by a conservator of a viatical settlement provider appointed
26 by a court of competent jurisdiction who transfers or assigns
27 ownership of viaticated policies pursuant to that court's
28 order.

29 Section 2. Section 517.072, Florida Statutes, is
30 created to read:

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1 517.072 Viatical settlement investments.--The
2 exemptions provided for by ss. 517.051(6), (8), and (10) do
3 not apply to a viatical settlement investment. The offering of
4 a viatical settlement investment is not an exempt transaction
5 under s. 517.061(2), (3), (8), (11), and (18), regardless of
6 whether the offering otherwise complies with the conditions of
7 that section, unless such offering is to a qualified
8 institutional buyer.

9 Section 3. Subsection (7) of section 517.081, Florida
10 Statutes, is amended, and subsection (8) is added to that
11 section, to read:

12 517.081 Registration procedure.--

13 (7) If upon examination of any application the office
14 shall find that the sale of the security referred to therein
15 would not be fraudulent and would not work or tend to work a
16 fraud upon the purchaser, that the terms of the sale of such
17 securities would be fair, just, and equitable, and that the
18 enterprise or business of the issuer is not based upon unsound
19 business principles, it shall record the registration of such
20 security in the register of securities; and thereupon such
21 security so registered may be sold by any registered dealer,
22 subject, however, to the further order of the office. In order
23 to determine if an offering is fair, just, and equitable, the
24 commission may by rule establish requirements and standards
25 for the filing, content, and circulation of any preliminary,
26 final, or amended prospectus and other sales literature and
27 may by rule establish merit qualification criteria relating to
28 the issuance of equity securities, debt securities, insurance
29 company securities, real estate investment trusts, and other
30 traditional and nontraditional investments, including, but not
31 limited to, oil and gas investments. The criteria may include

1 such elements as the promoter's equity investment ratio, the
2 financial condition of the issuer, the voting rights of
3 shareholders, the grant of options or warrants to underwriters
4 and others, loans and other affiliated transaction, the use or
5 refund of proceeds of the offering, and such other relevant
6 criteria as the office in its judgment may deem necessary to
7 such determination.

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

10 (a) Disclosures to purchasers of viatical settlement
11 investments.

12 (b) Recordkeeping requirements for sellers of viatical
13 settlement investments.

14 Section 4. Section 517.1215, Florida Statutes, is
15 created to read:

16 517.1215 Requirements, rules of conduct, and
17 prohibited business practices for investment advisors and
18 their associated persons.--

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

22 (a) Notification of custody of, maintenance of, and
23 safeguards for client funds.

24 (b) Communications with clients and independent
25 representatives.

26 (c) Requirements for investment advisers who have
27 custody of pooled investments.

28 (d) Exceptions to the custody requirements.

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1 In adopting the rules, the commission shall consider the rules
2 and regulations of the federal regulatory authority and the
3 North American Securities Administrators Association.

4 (2) The commission shall by rule establish rules of
5 conduct and prohibited business practices for investment
6 advisers and their associated persons. In adopting the rules,
7 the commission shall consider general industry standards as
8 expressed in the rules and regulations of the various federal
9 and self-regulatory agencies and regulatory associations,
10 including, but not limited to, the United States Securities
11 and Exchange Commission, the National Association of
12 Securities Dealers, and the North American Securities
13 Administrators Association.

14 Section 5. Section 517.1217, Florida Statutes, is
15 created to read:

16 517.1217 Rules of conduct and prohibited business
17 practices for dealers and their associated persons.--The
18 commission by rule may establish rules of conduct and
19 prohibited business practices for dealers and their associated
20 persons. In adopting the rules, the commission shall consider
21 general industry standards as expressed in the rules and
22 regulations of the various federal and self-regulatory
23 agencies and regulatory associations, including, but not
24 limited to, the United States Securities and Exchange
25 Commission, the National Association of Securities Dealers,
26 and the North American Securities Administrators Association.

27 Section 6. Paragraph (a) of subsection (7) of section
28 624.501, Florida Statutes, is amended to read:

29 624.501 Filing, license, appointment, and
30 miscellaneous fees.--The department, commission, or office, as
31 appropriate, shall collect in advance, and persons so served

1 shall pay to it in advance, fees, licenses, and miscellaneous
2 charges as follows:

3 (7) Life insurance agents.

4 (a) Agent's original appointment and biennial renewal
5 or continuation thereof, each insurer or agent making an
6 appointment:

7	Appointment.....	\$42.00
8	State tax.....	12.00
9	County tax.....	6.00
10	Total.....	\$60.00

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

13 626.015 Definitions.--As used in this part:

14 (10) "Life agent" means an individual representing an
15 insurer as to life insurance and annuity contracts, or acting
16 as a viatical settlement broker as defined in s. 626.9911,
17 including agents appointed to transact life insurance,
18 fixed-dollar annuity contracts, or variable contracts by the
19 same insurer.

20 Section 8. Paragraph (b) of subsection (1) of section
21 626.112, Florida Statutes, is amended to read:

22 626.112 License and appointment required; agents,
23 customer representatives, adjusters, insurance agencies,
24 service representatives, managing general agents.--

25 (1)

26 (b) Except as provided in subsection (6) or in
27 applicable department rules, and in addition to other conduct
28 described in this chapter with respect to particular types of
29 agents, a license as an insurance agent, service
30 representative, customer representative, or limited customer
31 representative is required in order to engage in the

1 solicitation of insurance. For purposes of this requirement,
2 as applicable to any of the license types described in this
3 section, the solicitation of insurance is the attempt to
4 persuade any person to purchase an insurance product by:

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

7 2. Distributing an invitation to contract to
8 prospective purchasers;

9 3. Making general or specific recommendations as to
10 insurance products;

11 4. Completing orders or applications for insurance
12 products; ~~or~~

13 5. Comparing insurance products, advising as to
14 insurance matters, or interpreting policies or coverages; or

15 6. Offering or attempting to negotiate on behalf of
16 another person a viatical settlement contract as defined in s.
17 626.9911.

18
19 However, an employee leasing company licensed pursuant to
20 chapter 468 which is seeking to enter into a contract with an
21 employer that identifies products and services offered to
22 employees may deliver proposals for the purchase of employee
23 leasing services to prospective clients of the employee
24 leasing company setting forth the terms and conditions of
25 doing business; classify employees as permitted by s. 468.529;
26 collect information from prospective clients and other sources
27 as necessary to perform due diligence on the prospective
28 client and to prepare a proposal for services; provide and
29 receive enrollment forms, plans, and other documents; and
30 discuss or explain in general terms the conditions,
31 limitations, options, or exclusions of insurance benefit plans

1 available to the client or employees of the employee leasing
2 company were the client to contract with the employee leasing
3 company. Any advertising materials or other documents
4 describing specific insurance coverages must identify and be
5 from a licensed insurer or its licensed agent or a licensed
6 and appointed agent employed by the employee leasing company.
7 The employee leasing company may not advise or inform the
8 prospective business client or individual employees of
9 specific coverage provisions, exclusions, or limitations of
10 particular plans. As to clients for which the employee leasing
11 company is providing services pursuant to s. 468.525(4), the
12 employee leasing company may engage in activities permitted by
13 ss. 626.7315, 626.7845, and 626.8305, subject to the
14 restrictions specified in those sections. If a prospective
15 client requests more specific information concerning the
16 insurance provided by the employee leasing company, the
17 employee leasing company must refer the prospective business
18 client to the insurer or its licensed agent or to a licensed
19 and appointed agent employed by the employee leasing company.

20 Section 9. Section 626.207, Florida Statutes, is
21 amended to read:

22 626.207 Department rulemaking authority; waiting
23 periods for applicants; penalties against licensees.--

24 (1) The department shall adopt rules establishing
25 specific waiting periods for applicants to become eligible for
26 licensure following denial, suspension, or revocation pursuant
27 to s. 626.611, s. 626.621, s. 626.8437, s. 626.844, s.
28 626.935, ~~s. 626.9917~~, s. 634.181, s. 634.191, s. 634.320, s.
29 634.321, s. 634.422, s. 634.423, s. 642.041, or s. 642.043.
30 The purpose of the waiting periods is to provide sufficient
31 time to demonstrate reformation of character and

1 rehabilitation. The waiting periods shall vary based on the
 2 type of conduct and the length of time since the conduct
 3 occurred and shall also be based on the probability that the
 4 propensity to commit illegal conduct has been overcome. The
 5 waiting periods may be adjusted based on aggravating and
 6 mitigating factors established by rule and consistent with
 7 this purpose.

8 (2) The department shall adopt rules establishing
 9 specific penalties against licensees for violations of s.
 10 626.611, s. 626.621, s. 626.8437, s. 626.844, s. 626.935, ~~s.~~
 11 ~~626.9917~~, s. 634.181, s. 634.191, s. 634.320, s. 634.321, s.
 12 634.422, s. 634.423, s. 642.041, or s. 642.043. The purpose of
 13 the revocation or suspension is to provide a sufficient
 14 penalty to deter future violations of the Florida Insurance
 15 Code. The imposition of a revocation or the length of
 16 suspension shall be based on the type of conduct and the
 17 probability that the propensity to commit further illegal
 18 conduct has been overcome at the time of eligibility for
 19 relicensure. The revocation or the length of suspension may be
 20 adjusted based on aggravating or mitigating factors,
 21 established by rule and consistent with this purpose.

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

24 626.331 Number of appointments permitted or
 25 required.--

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

30 Section 11. Subsection (17) is added to section
 31 626.611, Florida Statutes, to read:

1 626.611 Grounds for compulsory refusal, suspension, or
 2 revocation of agent's, title agency's, adjuster's, customer
 3 representative's, service representative's, or managing
 4 general agent's license or appointment.--The department shall
 5 deny an application for, suspend, revoke, or refuse to renew
 6 or continue the license or appointment of any applicant,
 7 agent, title agency, adjuster, customer representative,
 8 service representative, or managing general agent, and it
 9 shall suspend or revoke the eligibility to hold a license or
 10 appointment of any such person, if it finds that as to the
 11 applicant, licensee, or appointee any one or more of the
 12 following applicable grounds exist:

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

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

16 (b) No longer meeting the requirements for initial
 17 licensure.

18 (c) Having received a fee, commission, or other
 19 valuable consideration for his or her services with respect to
 20 viatical settlements that involved unlicensed viatical
 21 settlement providers or persons who offered or attempted to
 22 negotiate on behalf of another person a viatical settlement
 23 contract as defined in s. 626.9911 and who were not licensed
 24 life agents.

25 (d) Dealing in bad faith with viators.

26 Section 12. Section 626.777, Florida Statutes, is
 27 amended to read:

28 626.777 Scope of this part.--This part applies only to
 29 agents of life insurers, ~~and to~~ agents who are appointed by
 30 the same insurer as to both life insurance and health
 31

1 insurance, and agents who perform the functions of a viatical
 2 settlement broker as defined in s. 626.9911.

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

5 626.7845 Prohibition against unlicensed transaction of
 6 life insurance.--

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

10 (a) Solicit insurance or annuities or procure
 11 applications; ~~or~~

12 (b) In this state, engage or hold himself or herself
 13 out as engaging in the business of analyzing or abstracting
 14 insurance policies or of counseling or advising or giving
 15 opinions to persons relative to insurance or insurance
 16 contracts other than:

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

18 2. As to the counseling and advising of labor unions,
 19 associations, trustees, employers, or other business entities,
 20 the subsidiaries and affiliates of each, relative to their
 21 interests and those of their members or employees under
 22 insurance benefit plans; or

23 (c) In this state, from this state, or with a resident
 24 of this state, offer or attempt to negotiate on behalf of
 25 another person a viatical settlement contract as defined in s.
 26 626.9911.

27 Section 14. Section 626.9911, Florida Statutes, is
 28 amended to read:

29 626.9911 Definitions.--As used in this act, the term:

30 ~~(1)(14)~~ "Financing entity" means an underwriter,
 31 placement agent, lender, purchaser of securities, or purchaser

1 of a policy or certificate from a viatical settlement
2 provider, credit enhancer, or any entity that has direct
3 ownership in a policy or certificate that is the subject of a
4 viatical settlement contract, but whose principal activity
5 related to the transaction is providing funds or credit
6 enhancement to effect the viatical settlement or the purchase
7 of one or more viaticated ~~viatical~~ policies and who has an
8 agreement in writing with one or more licensed viatical
9 settlement providers to finance the acquisition of viatical
10 settlement contracts. The term does not include a
11 nonaccredited investor, ~~a viatical settlement purchaser,~~ or
12 other natural person. A financing entity may not enter into a
13 viatical settlement contract.

14 ~~(2)(1)~~ "Independent third-party trustee or escrow
15 agent" means an attorney, certified public accountant,
16 financial institution, or other person providing escrow
17 services under the authority of a regulatory body. The term
18 does not include any person associated, affiliated, or under
19 common control with a viatical settlement provider or viatical
20 settlement broker.

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

24 (4) "Life expectancy provider" means a person who
25 determines, or holds himself or herself out as determining,
26 life expectancies or mortality ratings used to determine life
27 expectancies:

28 (a) On behalf of a viatical settlement provider,
29 viatical settlement broker, life agent, or person engaged in
30 the business of viatical settlements;

31

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

3 (c) On residents of this state in connection with a
4 viatical settlement contract or viatical settlement
5 investment.

6 ~~(5)(2)~~ "Person" has the meaning specified in s. 1.01.

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

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

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

10 ~~(8)(13)~~ "Special purpose entity" means an entity
11 established by a licensed viatical settlement provider or by a
12 financing entity, which may be a corporation, partnership,
13 trust, limited liability company, or other similar entity
14 formed solely to provide, either directly or indirectly,
15 access to institutional capital markets to a viatical
16 settlement provider or financing entity. A special purpose
17 entity may not obtain capital from any natural person or
18 entity with less than \$50 million in assets and may ~~shall~~ not
19 enter into a viatical settlement contract ~~or a viatical~~
20 ~~settlement purchase agreement.~~

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

1 adviser lawfully registered under chapter 517, who is retained
2 to represent the viator and whose compensation is paid
3 directly by or at the direction and on behalf of the viator.

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

24 (11) "Viatical settlement investment" has the same
25 meaning as specified in s. 517.021.

26 ~~(12)(5)~~ "Viatical settlement provider" means a person
27 who, in this state, from this state, or with a resident of
28 this state, effectuates a viatical settlement contract. The
29 term does not include:

30 (a) Any bank, savings bank, savings and loan
31 association, credit union, or other licensed lending

1 institution that takes an assignment of a life insurance
2 policy as collateral for a loan.

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

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

10 (d) A trust that meets the definition of a "related
11 provider trust."

12 (e) A viator in this state.

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

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

15 ~~(13)(11)~~ "Viaticated policy" means a life insurance
16 policy, or a certificate under a group policy, which is the
17 subject of a viatical settlement contract.

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

27 ~~(8) "Viatical settlement purchase agreement" means a~~
28 ~~contract or agreement, entered into by a viatical settlement~~
29 ~~purchaser, to which the viator is not a party, to purchase a~~
30 ~~life insurance policy or an interest in a life insurance~~
31 ~~policy, which is entered into for the purpose of deriving an~~

1 ~~economic benefit. The term also includes purchases made by~~
2 ~~viatical settlement purchasers from any person other than the~~
3 ~~provider who effectuated the viatical settlement contract.~~

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

27 ~~(10) "Viatical settlement sales agent" means a person~~
28 ~~other than a licensed viatical settlement provider who~~
29 ~~arranges the purchase through a viatical settlement purchase~~
30 ~~agreement of a life insurance policy or an interest in a life~~
31 ~~insurance policy.~~

1 Section 15. Paragraph (f) of subsection (3) of section
2 626.9912, Florida Statutes, is amended, present paragraph (g)
3 of that subsection is redesignated as paragraph (h) and a new
4 paragraph (g) is added to that subsection, and subsection (4)
5 of that section is amended to read:

6 626.9912 Viatical settlement provider license
7 required; application for license.--

8 (3) In the application, the applicant must provide all
9 of the following:

10 (f) All applications, viatical settlement contract
11 forms, ~~viatical settlement purchase agreement forms~~, escrow
12 forms, and other related forms proposed to be used by the
13 applicant.

14 (g) A general description of the method the viatical
15 settlement provider will use in determining life expectancies,
16 including a description of the applicant's intended receipt of
17 life expectancies, the applicant's intended receipt of life
18 expectancies, the applicant's intended use of life expectancy
19 providers, and the written plan or plans of policies and
20 procedures used to determine life expectancies.

21 (4) The office may not issue a license to an entity
22 other than a natural person if it is not satisfied that all
23 officers, directors, employees, stockholders, partners, and
24 any other persons who exercise or have the ability to exercise
25 effective control of the entity or who have the ability to
26 influence the transaction of business by the entity meet the
27 standards of this act and have not violated any provision of
28 this act or rules of the commission related to the business of
29 viatical settlement contracts ~~or viatical settlement purchase~~
30 ~~agreements~~.

31

1 Section 16. Section 626.9913, Florida Statutes, is
2 amended to read:

3 626.9913 Viatical settlement provider license
4 continuance; annual report; fees; deposit.--

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

7 (2) Annually, on or before March 1, the viatical
8 settlement provider licensee shall file a statement containing
9 information the commission requires and shall pay to the
10 office a license fee in the amount of \$500. The annual
11 statement shall include audited financial statements prepared
12 in accordance with generally accepted accounting principles by
13 an independent certified public accountant as of the last day
14 of the preceding calendar year. If the audited financial
15 statement has not been completed, however, the licensee shall
16 include in its annual statement an unaudited financial
17 statement and an affidavit from an officer of the licensee
18 stating that the audit has not been completed. In this event,
19 the licensee shall submit the audited statement on or before
20 June 1. The annual statement shall also provide the office
21 with a report of all life expectancy providers who have
22 provided life expectancies directly or indirectly to the
23 viatical settlement provider for use in connection with a
24 viatical settlement contract or a viatical settlement
25 investment. A viatical settlement provider shall include in
26 all statements filed with the office all information requested
27 by the office regarding a related provider trust established
28 by the viatical settlement provider. The office may require
29 more frequent reporting. Failure to timely file the annual
30 statement or to timely pay the license fee is grounds for
31 immediate suspension of the license.

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

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

22 (5) A judgment creditor or other claimant of a
23 viatical settlement provider does not have the right to levy
24 upon any of the assets or securities held in this state
25 pursuant to this section.

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

28 626.9914 Suspension, revocation, or nonrenewal of
29 viatical settlement provider license; grounds; administrative
30 fine.--

31

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

4 (a) Has made a misrepresentation in the application
 5 for the license;

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

9 (c) Demonstrates a pattern of unreasonable payments to
 10 viators;

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

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

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

19 (g) Deals in bad faith with viators;

20 (h) Has violated any provision of the insurance code
 21 or of this act;

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

25 (j) No longer meets the requirements for initial
 26 licensure; ~~or~~

27 (k) Obtains or utilizes life expectancies from life
 28 expectancy providers who are not registered with the office
 29 pursuant to this act.

30 Section 18. Section 626.9916, Florida Statutes, is
 31 amended to read:

1 626.9916 Viatical settlement broker license required ~~+~~
2 ~~application for license.--~~

3 (1) After October 1, 2006 ~~July 1, 1996~~, a person,
4 other than a life agent licensed under this chapter, may not
5 in this state, from this state, or with a resident of this
6 state perform the functions of a viatical settlement broker ~~as~~
7 ~~defined in this act without first having obtained a license~~
8 ~~from the department.~~

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

19 (3) Each natural person who on July 1, 2005, held a
20 viatical settlement broker's license and self-appointment may,
21 upon obtaining a life agent license on or before October 1,
22 2006, transfer an existing broker self-appointment to such
23 license. In the application, the applicant must provide all of
24 the following:

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

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

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

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

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

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

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

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

30 (4) All viatical settlement broker licenses shall
31 terminate on October 1, 2006, and shall not be subject to

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

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

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

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

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

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

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

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

20 Section 19. Section 626.99175, Florida Statutes, is
 21 created to read:

22 626.99175 Life expectancy providers; registration
 23 required; denial, suspension, revocation.--

24 (1) After July 1, 2006, a person may not perform the
 25 functions of a life expectancy provider without first having
 26 registered as a life expectancy provider, except as provided
 27 in subsection (6).

28 (2) Application for registration as a life expectancy
 29 provider must be made to the office by the applicant on a form
 30 prescribed by the office, under oath and signed by the
 31

1 applicant. The application must be accompanied by a fee of
2 \$500.

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

8 (4) In the application, the applicant must provide all
9 of the following:

10 (a) The full name, age, residence address, and
11 business address, and all occupations engaged in by the
12 applicant during the 5 years preceding the date of the
13 application.

14 (b) A copy of the applicant's basic organizational
15 documents, if any, including the articles of incorporation,
16 articles of association, partnership agreement, trust
17 agreement, or other similar documents, together with all
18 amendments to such documents.

19 (c) Copies of all bylaws, rules, regulations, or
20 similar documents regulating the conduct of the applicant's
21 internal affairs.

22 (d) A list showing the name, business and residence
23 addresses, and official position of each individual who is
24 responsible for conduct of the applicant's affairs, including,
25 but not limited to, any member of the board of directors,
26 board of trustees, executive committee, or other governing
27 board or committee and any other person or entity owning or
28 having the right to acquire 10 percent or more of the voting
29 securities of the applicant, and any person performing life
30 expectancies by the applicant.

31

1 (e) A sworn biographical statement on forms supplied
2 by the office with respect to each individual identified under
3 paragraph (d), including whether such individual has been
4 associated with any other life expectancy provider or has
5 performed any services for a person in the business of
6 viatical settlements.

7 (f) A sworn statement of any criminal and civil
8 actions pending or final against the registrant or any
9 individual identified under paragraph (d):

10 (g) A general description of the following policies
11 and procedures covering all life expectancy determination
12 criteria and protocols:

13 1. The plan or plans of policies and procedures used
14 to determine life expectancies.

15 2. A description of the training, including continuing
16 training, of the individuals who determine life expectancies.

17 3. A description of how the life expectancy provider
18 updates its manuals, underwriting guides, mortality tables,
19 and other reference works and ensures that the provider bases
20 its determination of life expectancies on current data.

21 (h) A plan for assuring confidentiality of personal,
22 medical, and financial information in accordance with federal
23 and state laws.

24 (i) An anti-fraud plan as required pursuant to s.
25 626.99278.

26 (j) A list of any agreements, contracts, or any other
27 arrangement to provide life expectancies to a viatical
28 settlement provider, viatical settlement broker, or any other
29 person in the business of viatical settlements in connection
30 with any viatical settlement contract or viatical settlement
31 investment.

1 (5) As part of the application, and on or before March
2 1 of every 3 years thereafter, a registered life expectancy
3 provider shall file with the office an audit of all life
4 expectancies by the life expectancy provider for the 5
5 calendar years immediately preceding such audit, which audit
6 shall be conducted and certified by a nationally recognized
7 actuarial firm and shall include only the following:

8 (a) A mortality table.

9 (b) The number, percentage, and an actual-to-expected
10 ratio of life expectancies in the following categories: life
11 expectancies of less than 24 months, life expectancies of 25
12 months to 48 months, life expectancies of 49 months to 72
13 months, life expectancies of 73 months to 108 months, life
14 expectancies of 109 months to 144 months, life expectancies of
15 145 months to 180 months, and life expectancies of more than
16 180 months.

17 (6) No viatical settlement broker, viatical settlement
18 provider, or insurance agent in the business of viatical
19 settlements in this state shall directly or indirectly own or
20 be an officer, director, or employee of a life expectancy
21 provider.

22 (7) Each registered life expectancy provider shall
23 provide the office, as applicable, at least 30 days' advance
24 notice of any change in the registrant's name, residence
25 address, principal business address, or mailing address.

26 (8) A person required to be registered by this section
27 shall for 5 years retain copies of all life expectancies and
28 supporting documents and medical records unless those personal
29 medical records are subject to different retention or
30 destruction requirements of a federal or state personal health
31 information law.

1 (9) An application for life expectancy provider
2 registration shall be approved or denied by the commissioner
3 within 60 calendar days following receipt of a completed
4 application by the commissioner. The office shall notify the
5 applicant that the application is complete. A completed
6 application that is not approved or denied in 60 calendar days
7 following its receipt shall be deemed approved.

8 (10) The office may, in its discretion, deny the
9 application for a life expectancy provider registration or
10 suspend, revoke, or refuse to renew or continue the
11 registration of a life expectancy provider if the office
12 finds:

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

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

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

19 (d) That the applicant or registrant:

20 1. Has been found guilty of or pled guilty or nolo
21 contendere to a felony or a crime punishable by imprisonment
22 of 1 year or more under the law of the United States of
23 America or of any state thereof or under the law of any other
24 country;

25 2. Has knowingly and willfully aided, assisted,
26 procured, advised, or abetted any person in the violation of a
27 provision of the insurance code or any order or rule of the
28 department, commission, or office;

29 3. Has knowingly and with intent to defraud, provided
30 a life expectancy that does not conform to an applicant's or
31 registrant's general practice;

1 4. Does not have a good business reputation or does
 2 not have experience, training, or education that qualifies the
 3 applicant or registrant to conduct the business of a life
 4 expectancy provider; or

5 5. Has demonstrated a lack of fitness or
 6 trustworthiness to engage in the business of issuing life
 7 expectancies.

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

15 (12) It is a violation of this section for a person to
 16 represent, orally or in writing, that a life expectancy
 17 provider's registration pursuant to this act is in any way a
 18 recommendation or approval of the entity or means that the
 19 qualifications or abilities have in any way been approved of.

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

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

30 Section 21. Section 626.992, Florida Statutes, is
 31 amended to read:

1 626.992 Use of licensed viatical settlement providers,
2 viatical settlement ~~licensed~~ brokers, and registered life
3 expectancy providers, ~~and sales agents~~ required.--

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

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

21 (3) After July 1, 2006, a person may not operate as a
22 life expectancy provider unless such person is registered as a
23 life expectancy provider pursuant to this act. A viatical
24 ~~settlement sales agent may not use any person to perform the~~
25 ~~functions of a viatical settlement broker unless such person~~
26 ~~holds a current, valid license as a viatical settlement~~
27 ~~broker.~~

28 (4) After July 1, 2006, a viatical settlement
29 provider, viatical settlement broker, or any other person in
30 the business of viatical settlements may not obtain life
31 expectancies from a person who is not registered as a life

1 ~~expectancy provider pursuant to this act. A person may not~~
 2 ~~perform the functions of a viatical settlement sales agent~~
 3 ~~unless licensed as a life agent as defined in s. 626.015 and~~
 4 ~~as provided in this chapter.~~

5 Section 22. Subsections (1) and (2) of section
 6 626.9921, Florida Statutes, are amended to read:

7 626.9921 Filing of forms; required procedures;
 8 approval.--

9 (1) A viatical settlement contract form, ~~viatical~~
 10 ~~settlement purchase agreement form~~, escrow form, or related
 11 form may be used in this state only after the form has been
 12 filed with the office and only after the form has been
 13 approved by the office.

14 (2) The viatical settlement contract form, ~~viatical~~
 15 ~~settlement purchase agreement form~~, escrow form, or related
 16 form must be filed with the office at least 60 days before its
 17 use. The form is considered approved on the 60th day after its
 18 date of filing unless it has been previously disapproved by
 19 the office. The office must disapprove a viatical settlement
 20 contract form, ~~viatical settlement purchase agreement form~~,
 21 escrow form, or related form that is unreasonable, contrary to
 22 the public interest, discriminatory, ~~or~~ misleading, or unfair
 23 to the viator ~~or the purchaser~~.

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

27 626.9922 Examination.--

28 (2) All accounts, books and records, documents, files,
 29 contracts, and other information relating to all transactions
 30 of viatical settlement contracts, life expectancies, or
 31 viatical settlement purchase agreements made before July 1,

1 2005, must be maintained by the licensee for a period of at
2 least 3 years after the death of the insured and must be
3 available to the office or department for inspection during
4 reasonable business hours.

5 (5) The office has jurisdiction over all viatical
6 settlement purchase agreements made before July 1, 2005,
7 including, but not limited to, the authority to examine
8 persons in possession of records relating to viatical
9 settlement purchase agreements made before July 1, 2005, and
10 that authority set forth in s. 624.319.

11 (6) If the office makes the determination that a
12 viatical settlement provider does not have the financial
13 ability to perform its present or future obligations under the
14 viatical settlement purchase agreements made before July 1,
15 2005, the office shall make a referral to the United States
16 Securities and Exchange Commission or the Office of Financial
17 Regulation for further administrative action pursuant to s.
18 517.191, including, but not limited to, the appointment of a
19 receiver by the court.

20 (7) Subsections (1), (2), (3), and (4) apply to life
21 expectancy providers providing life expectancies in the state
22 and providing life expectancies to viatical settlement
23 providers in the state, as if life expectancy providers were
24 licensees.

25 Section 24. Section 626.99245, Florida Statutes, is
26 amended to read:

27 626.99245 Conflict of regulation of viaticals.--

28 ~~(1) A viatical settlement provider who from this state~~
29 ~~enters into a viatical settlement purchase agreement with a~~
30 ~~purchaser who is a resident of another state that has enacted~~
31 ~~statutes or adopted regulations governing viatical settlement~~

1 ~~purchase agreements, shall be governed in the effectuation of~~
2 ~~that viatical settlement purchase agreement by the statutes~~
3 ~~and regulations of the purchaser's state of residence. If the~~
4 ~~state in which the purchaser is a resident has not enacted~~
5 ~~statutes or regulations governing viatical settlement purchase~~
6 ~~agreements, the provider shall give the purchaser notice that~~
7 ~~neither Florida nor his or her state regulates the transaction~~
8 ~~upon which he or she is entering. For transactions in these~~
9 ~~states, however, the viatical settlement provider is to~~
10 ~~maintain all records required as if the transactions were~~
11 ~~executed in Florida. However, the forms used in those states~~
12 ~~need not be approved by the office.~~

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

28 ~~(2)(3)~~ This section does not affect the requirement of
29 ss. 626.9911~~(12)(5)~~ and 626.9912(1) that a viatical settlement
30 provider doing business from this state must obtain a viatical
31 settlement license from the office. As used in this

1 subsection, the term "doing business from this state" includes
2 effectuating viatical settlement contracts ~~and effectuating~~
3 ~~viatical settlement purchase agreements~~ from offices in this
4 state, regardless of the state of residence of the viator ~~or~~
5 ~~the viatical settlement purchaser.~~

6 ~~(4) The offer, sale, and purchase of viatical~~
7 ~~settlement contracts, and the regulation of viatical~~
8 ~~settlement providers shall be within the exclusive~~
9 ~~jurisdiction of the Office of Insurance Regulation under the~~
10 ~~provisions of this part.~~

11 Section 25. Section 626.9925, Florida Statutes, is
12 amended to read:

13 626.9925 Rules.--The commission may adopt rules to
14 administer this act, including rules establishing standards
15 for evaluating advertising by licensees; rules providing for
16 the collection of data, for disclosures to viators ~~or~~
17 ~~purchasers, and~~ for the reporting of life expectancies and for
18 the registration of life expectancy providers; and rules
19 defining terms used in this act and prescribing recordkeeping
20 requirements relating to executed viatical settlement
21 contracts ~~and viatical settlement purchase agreements.~~

22 Section 26. Section 626.9926, Florida Statutes, is
23 amended to read:

24 626.9926 Rate regulation not authorized.--Nothing in
25 this act shall be construed to authorize the office or
26 department to directly or indirectly regulate the amount paid
27 as consideration for entry into a viatical settlement contract
28 ~~or viatical settlement purchase agreement.~~

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

31

1 626.9927 Unfair trade practices; cease and desist;
2 injunctions; civil remedy.--

3 (1) A violation of this act is an unfair trade
4 practice under ss. 626.9521 and 626.9541 and is subject to the
5 penalties provided in the insurance code. Part IX ~~§~~ of this
6 chapter, entitled Unfair Insurance Trade Practices, applies to
7 a licensee under this act or a transaction subject to this act
8 as if a viatical settlement contract ~~and a viatical settlement~~
9 ~~purchase agreement~~ were an insurance policy.

10 Section 28. Paragraph (b) of subsection (1) of section
11 626.99275, Florida Statutes, is amended, paragraph (d) is
12 added to that subsection, and subsection (2) of that section
13 is reenacted, to read:

14 626.99275 Prohibited practices; penalties.--

15 (1) It is unlawful for any person:

16 (b) To knowingly or with the intent to defraud, for
17 the purpose of depriving another of property or for pecuniary
18 gain, issue or use a pattern of false, misleading, or
19 deceptive life expectancies. ~~In the solicitation or sale of a~~
20 ~~viatical settlement purchase agreement:~~

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

23 ~~2. To obtain money or property by means of an untrue~~
24 ~~statement of a material fact or by any omission to state a~~
25 ~~material fact necessary in order to make the statements made,~~
26 ~~in light of the circumstances under which they were made, not~~
27 ~~misleading; or~~

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

31

1 (d) To knowingly or intentionally facilitate the
 2 change of state of residency of a viator to avoid the
 3 provisions of this chapter.

4 (2) A person who violates any provision of this
 5 section commits:

6 (a) A felony of the third degree, punishable as
 7 provided in s. 775.082, s. 775.083, or s. 775.084, if the
 8 insurance policy involved is valued at any amount less than
 9 \$20,000.

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

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

17 Section 29. Section 626.99278, Florida Statutes, is
 18 amended to read:

19 626.99278 Viatical provider anti-fraud plan.--Every
 20 licensed viatical settlement provider and registered life
 21 expectancy provider ~~viatical settlement broker~~ must adopt an
 22 anti-fraud plan and file it with the Division of Insurance
 23 Fraud of the department ~~on or before December 1, 2000~~. Each
 24 anti-fraud plan shall include:

25 (1) A description of the procedures for detecting and
 26 investigating possible fraudulent acts and procedures for
 27 resolving material inconsistencies between medical records and
 28 insurance applications.†

29 (2) A description of the procedures for the mandatory
 30 reporting of possible fraudulent insurance acts and prohibited
 31

1 practices set forth in s. 626.99275 to the Division of
 2 Insurance Fraud of the department.†

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

5 (4) A written description or chart outlining the
 6 organizational arrangement of the anti-fraud personnel who are
 7 responsible for the investigation and reporting of possible
 8 fraudulent insurance acts,† and for the investigation of
 9 ~~investigating~~ unresolved material inconsistencies between
 10 medical records and insurance applications.

11 (5) For viatical settlement providers, a description
 12 of the procedures used to perform initial and continuing
 13 review of the accuracy of life expectancies used in connection
 14 with a viatical settlement contract or viatical settlement
 15 investment.

16 Section 30. Section 626.9928, Florida Statutes, is
 17 amended to read:

18 626.9928 Acquisitions.--Acquisition of interest in a
 19 viatical settlement provider ~~or viatical settlement broker~~ is
 20 subject to s. 628.4615.

21 Section 31. Section 626.99285, Florida Statutes, is
 22 amended to read:

23 626.99285 Applicability of insurance code.--In
 24 addition to other applicable provisions cited in the insurance
 25 code, the office or department, as appropriate, has the
 26 authority granted under ss. 624.310, 626.901, and 626.989 to
 27 regulate viatical settlement providers, viatical settlement
 28 brokers, ~~viatical settlement sales agents,~~ viatical settlement
 29 contracts, ~~viatical settlement purchase agreements,~~ and
 30 viatical settlement transactions.
 31

1 Section 32. Section 626.99295, Florida Statutes, is
2 amended to read:

3 626.99295 Grace period.--Any person who, on July 1,
4 2005, is effectuating a viatical settlement purchase agreement
5 made before July 1, 2005, under provisions of law in effect
6 before such date, which viatical settlement purchase agreement
7 was not registered pursuant to chapter 517, must proceed
8 within 30 days after July 1, 2005, to conclude all viatical
9 settlement purchase transactions in progress, provided, if
10 funds have not been matched with a viaticated policy, such
11 funds, or any unmatched portion of such funds, shall be
12 returned to the viatical settlement purchaser within 30 days
13 after July 1, 2005. The provider may not solicit, negotiate,
14 advertise, or effectuate new viatical settlement purchase
15 agreements after July 1, 2005. An unlicensed viatical
16 ~~settlement provider or viatical settlement broker that was~~
17 ~~legally transacting business in this state on June 30, 2000,~~
18 ~~may continue to transact such business, in the absence of any~~
19 ~~orders by the office, department, or the former Department of~~
20 ~~Insurance to the contrary, until the office or department, as~~
21 ~~applicable, approves or disapproves the viatical settlement~~
22 ~~provider's application for licensure if the viatical~~
23 ~~settlement provider or viatical settlement broker filed with~~
24 ~~the former department an application for licensure no later~~
25 ~~than August 1, 2000, and if the viatical settlement provider~~
26 ~~or viatical settlement broker complies with all other~~
27 ~~provisions of this act. Any form for which former department~~
28 ~~approval was required under this part must have been filed by~~
29 ~~August 1, 2000, and may continue to be used until disapproved~~
30 ~~by the office or department.~~

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

Section 34. This act shall take effect July 1, 2005.