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1 A bill to be entitled  
2 An act relating to viatical settlements; amending s.  
3 626.9911, F.S.; providing and revising definitions;  
4 amending s. 626.9913, F.S.; requiring additional  
5 information in an annual statement; revising a deposit  
6 requirement; amending s. 626.9914, F.S.; adding an  
7 additional ground for imposing adverse consequences on  
8 viatical settlement provider licenses; increasing  
9 administrative fines; amending s. 626.99175, F.S.;  
10 deleting an exception from registration requirements for  
11 life expectancy providers; creating s. 626.99185, F.S.;  
12 requiring viatical settlement providers to provide viators  
13 with a disbursement disclosure statement; providing  
14 statement requirements and procedures; amending ss.  
15 626.9924 and 626.99245, F.S.; conforming cross-references;  
16 creating s. 626.99273, F.S.; prohibiting certain practices  
17 or activities relating to viatical settlement contracts or  
18 insurance policies; specifying that such practices or  
19 activities are fraudulent; requiring certain materials to  
20 be filed with the Office of Insurance Regulation before  
21 entering into viatical settlement contracts; prohibiting  
22 certain references in marketing materials; prohibiting  
23 certain statements or representations to applicants or  
24 policyholders; amending s. 626.99275, F.S.; specifying an  
25 additional prohibited practice; prohibiting any person  
26 from entering into a viatical settlement contract and from  
27 issuing, soliciting, marketing, or otherwise promoting the  
28 purchase of a policy under certain circumstances;

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

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29 providing criteria; providing criminal penalties; creating  
 30 s. 626.99276, F.S.; providing insurer notification  
 31 requirements for viatical settlement providers; providing  
 32 insurer requirements for provider requests for transfers  
 33 of certain policies; specifying prohibitions against  
 34 insurers relating to such transfers; providing insurer  
 35 response requirements for requests for such transfers;  
 36 amending s. 626.99278, F.S.; specifying certain  
 37 information required to be maintained and reported  
 38 relating to anti-fraud plans and procedures, medical  
 39 records and insurance applications, and reporting of  
 40 fraudulent acts and prohibited practices; creating s.  
 41 626.99289, F.S.; providing that certain contracts,  
 42 agreements, arrangements, and transactions are void and  
 43 unenforceable; repealing s. 626.99287, F.S., relating to  
 44 the contestability of viaticated policies; providing an  
 45 effective date.

46  
 47 Be It Enacted by the Legislature of the State of Florida:

48  
 49 Section 1. Section 626.9911, Florida Statutes, is amended  
 50 to read:

51 626.9911 Definitions.--As used in this act, the term:

52 (1) "Business of viatical settlements" means an activity  
 53 involved in, but not limited to, the offering, soliciting,  
 54 negotiating, procuring, effectuating, purchasing, investing,  
 55 monitoring, tracking, underwriting, selling, transferring,  
 56 assigning, pledging, hypothecating, or in any other manner

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57 acquiring an interest in a life insurance policy by means of a  
58 viatical settlement contract.

59 (2)~~(1)~~ "Financing entity" means an underwriter, placement  
60 agent, lender, purchaser of securities, or purchaser of a policy  
61 or certificate from a viatical settlement provider, credit  
62 enhancer, or any entity that has direct ownership in a policy or  
63 certificate that is the subject of a viatical settlement  
64 contract, but whose principal activity related to the  
65 transaction is providing funds or credit enhancement to effect  
66 the viatical settlement or the purchase of one or more  
67 viaticated policies and who has an agreement in writing with one  
68 or more licensed viatical settlement providers to finance the  
69 acquisition of viatical settlement contracts. The term does not  
70 include a nonaccredited investor or other natural person. A  
71 financing entity may not enter into a viatical settlement  
72 contract.

73 (3) "Fraudulent viatical settlement act" means an act or  
74 omission committed by any person who, knowingly or with intent  
75 to defraud, for the purpose of depriving another of property or  
76 for pecuniary gain, commits or permits its employees or its  
77 agents to engage in acts including:

78 (a)1. Presenting, causing to be presented, or preparing  
79 with knowledge or belief that it will be presented to or by a  
80 viatical settlement provider, viatical settlement broker,  
81 financing entity, insurer, insurance producer, or any other  
82 person false material information or concealing material  
83 information as part of, in support of, or concerning a fact  
84 material to one or more of the following:

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85 a. An application for the issuance of a viatical  
86 settlement contract or insurance policy;

87 b. The underwriting of a viatical settlement contract or  
88 insurance policy;

89 c. A claim for payment or benefit pursuant to a viatical  
90 settlement contract or insurance policy;

91 d. Premiums paid on an insurance policy;

92 e. Payments and changes in ownership or beneficiary made  
93 in accordance with the terms of a viatical settlement contract  
94 or insurance policy;

95 f. The reinstatement or conversion of an insurance policy;

96 g. The solicitation, offer, effectuation, or sale of a  
97 viatical settlement contract or insurance policy;

98 h. The issuance of written evidence of a viatical  
99 settlement contract or insurance policy; or

100 i. A financing transaction.

101 2.a. Employing any plan, financial structure, device,  
102 scheme, or artifice to defraud related to viaticated policies;

103 b. Entering into any practice or plan that involves  
104 stranger-originated life insurance; or

105 c. Failing to disclose to the insurer when requested by  
106 the insurer that the prospective insured has undergone a life  
107 expectancy evaluation by any person or entity other than the  
108 insurer or its authorized representatives in connection with the  
109 issuance of the policy.

110 (b) In the furtherance of a fraud or to prevent the  
111 detection of a fraud, any person who commits or permits its  
112 employees or its agents to:

113        1. Remove, conceal, alter, destroy, or sequester from the  
 114 office the assets or records of a licensee or other person  
 115 engaged in the business of viatical settlements;

116        2. Misrepresent or conceal the financial condition of a  
 117 licensee, financing entity, insurer, or other person;

118        3. Transact the business of viatical settlements in  
 119 violation of laws requiring a license, certificate of authority,  
 120 or other legal authority for the transaction of the business of  
 121 viatical settlements; or

122        4. File with the office or the equivalent chief insurance  
 123 regulatory official of another jurisdiction a document that  
 124 contains false information or otherwise conceals information  
 125 about a material fact from the office or other regulatory  
 126 official;

127        (c) Embezzlement, theft, misappropriation, or conversion  
 128 of moneys, funds, premiums, credits, or other property of a  
 129 viatical settlement provider, insurer, insured, viator,  
 130 insurance policyowner, or any other person engaged in the  
 131 business of viatical settlements or insurance;

132        (d) Recklessly entering into, negotiating, brokering, or  
 133 otherwise dealing in a viatical settlement contract, the subject  
 134 of which is a life insurance policy that was obtained by  
 135 presenting false information concerning any fact material to the  
 136 policy or by concealing, for the purpose of misleading another,  
 137 information concerning any fact material to the policy, in which  
 138 the person or persons intended to defraud the policy's issuer,  
 139 viatical settlement provider, or viator. For purposes of this  
 140 paragraph, the term "recklessly" means consciously and with

141 clear, unjustifiable disregard for the substantial likelihood of  
 142 the relevant facts or risks, which disregard involves a gross  
 143 deviation from acceptable standards of conduct;

144 (e) Knowingly or intentionally facilitating the viator's  
 145 change of residency state to avoid the provisions of this act;

146 (f) Knowingly or intentionally, directly or indirectly,  
 147 facilitating or causing the creation of a trust with a non-  
 148 Florida situs or other nonresident entity for the purpose of  
 149 being a policyowner of a life insurance policy covering a  
 150 Florida resident insured to avoid the provisions of this act;

151 (g) Knowingly or intentionally, directly or indirectly,  
 152 facilitating or causing the transfer of the ownership of a  
 153 policy covering a Florida resident insured to a trust with a  
 154 non-Florida situs or other nonresident entity to avoid the  
 155 provisions of this act;

156 (h) Attempting to commit, assisting, aiding, or abetting  
 157 in the commission of or conspiring to commit the acts or  
 158 omissions specified in this subsection;

159 (i) Any application for, the existence of, or any payments  
 160 related to a loan secured directly or indirectly by any interest  
 161 in a life insurance policy; or

162 (j) Failing to disclose to the insurer when the request  
 163 for such disclosure has been asked for by the insurer that the  
 164 prospective insured has undergone a life expectancy evaluation  
 165 by any person or entity other than the insurer or its authorized  
 166 representatives in connection with the issuance of the policy.

167 (4)-(2) "Independent third-party trustee or escrow agent"  
 168 means an attorney, certified public accountant, financial

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169 institution, or other person providing escrow services under the  
170 authority of a regulatory body. The term does not include any  
171 person associated, affiliated, or under common control with a  
172 viatical settlement provider or viatical settlement broker.

173 (5)~~(3)~~ "Life expectancy" means an opinion or evaluation as  
174 to how long a particular person is to live, or relating to such  
175 person's expected demise.

176 (6)~~(4)~~ "Life expectancy provider" means a person who  
177 determines, or holds himself or herself out as determining, life  
178 expectancies or mortality ratings used to determine life  
179 expectancies:

180 (a) On behalf of a viatical settlement provider, viatical  
181 settlement broker, life agent, or person engaged in the business  
182 of viatical settlements;

183 (b) In connection with a viatical settlement investment,  
184 pursuant to s. 517.021(23); or

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

187 (7)~~(5)~~ "Person" has the meaning specified in s. 1.01.

188 (8)~~(6)~~ "Related form" means any form, created by or on  
189 behalf of a licensee, which a viator or insured is required to  
190 sign or initial. The forms include, but are not limited to, a  
191 power of attorney, a release of medical information form, a  
192 suitability questionnaire, a disclosure document, or any  
193 addendum, schedule, or amendment to a viatical settlement  
194 contract considered necessary by a provider to effectuate a  
195 viatical settlement transaction.

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196        (9)~~(7)~~ "Related provider trust" means a titling trust or  
197 other trust established by a licensed viatical settlement  
198 provider or financing entity for the sole purpose of holding the  
199 ownership or beneficial interest in purchased policies in  
200 connection with a financing transaction. The trust must have a  
201 written agreement with a licensed viatical settlement provider  
202 or financing entity under which the licensed viatical settlement  
203 provider or financing entity is responsible for insuring  
204 compliance with all statutory and regulatory requirements and  
205 under which the trust agrees to make all records and files  
206 relating to viatical settlement transactions available to the  
207 office as if those records and files were maintained directly by  
208 the licensed viatical settlement provider. This term does not  
209 include an independent third-party trustee or escrow agent or a  
210 trust that does not enter into agreements with a viator. A  
211 related provider trust shall be subject to all provisions of  
212 this act that apply to the viatical settlement provider who  
213 established the related provider trust, except s. 626.9912,  
214 which shall not be applicable. A viatical settlement provider  
215 may establish no more than one related provider trust, and the  
216 sole trustee of such related provider trust shall be the  
217 viatical settlement provider licensed under s. 626.9912. The  
218 name of the licensed viatical settlement provider shall be  
219 included within the name of the related provider trust.

220        (10)~~(8)~~ "Special purpose entity" means an entity  
221 established by a licensed viatical settlement provider or by a  
222 financing entity, which may be a corporation, partnership,  
223 trust, limited liability company, or other similar entity formed



224 solely to provide, either directly or indirectly, access to  
 225 institutional capital markets to a viatical settlement provider  
 226 or financing entity. A special purpose entity may not obtain  
 227 capital from any natural person or entity with less than \$50  
 228 million in assets and may not enter into a viatical settlement  
 229 contract.

230 (11) "Stranger-originated life insurance" means a practice  
 231 or plan to initiate a life insurance policy for the benefit of a  
 232 third-party investor who, at the time of policy origination, has  
 233 no insurable interest in the insured. Stranger-originated life  
 234 insurance practices include, but are not limited to, cases in  
 235 which life insurance is purchased with resources or guarantees  
 236 from or through a person or entity who, at the time of policy  
 237 inception, could not lawfully initiate the policy himself,  
 238 herself, or itself and when, at the time of inception, there is  
 239 a verbal or written arrangement or agreement to directly or  
 240 indirectly transfer the ownership of the policy or policy  
 241 benefits to a third party. Trusts that are created to give the  
 242 appearance of an insurable interest and are used to initiate  
 243 policies for investors violate insurable interest laws and the  
 244 prohibition against wagering on life.

245 (12)-(9) "Viatical settlement broker" means a person who,  
 246 on behalf of a viator and for a fee, commission, or other  
 247 valuable consideration, offers or attempts to negotiate viatical  
 248 settlement contracts between a viator resident in this state and  
 249 one or more viatical settlement providers. Notwithstanding the  
 250 manner in which the viatical settlement broker is compensated, a  
 251 viatical settlement broker is deemed to represent only the

252 viator and owes a fiduciary duty to the viator to act according  
 253 to the viator's instructions and in the best interest of the  
 254 viator. The term does not include an attorney, licensed  
 255 Certified Public Accountant, or investment adviser lawfully  
 256 registered under chapter 517, who is retained to represent the  
 257 viator and whose compensation is paid directly by or at the  
 258 direction and on behalf of the viator.

259 (13)~~(10)~~ "Viatical settlement contract" means a written  
 260 agreement entered into between a viatical settlement provider,  
 261 or its related provider trust, and a viator. The viatical  
 262 settlement contract includes an agreement to transfer ownership  
 263 or change the beneficiary designation of a life insurance policy  
 264 at a later date, regardless of the date that compensation is  
 265 paid to the viator. The agreement must establish the terms under  
 266 which the viatical settlement provider will pay compensation or  
 267 anything of value, which compensation or value is less than the  
 268 expected death benefit of the insurance policy or certificate,  
 269 in return for the viator's assignment, transfer, sale, devise,  
 270 or bequest of the death benefit or ownership of all or a portion  
 271 of the insurance policy or certificate of insurance to the  
 272 viatical settlement provider. The term "viatical settlement  
 273 contract" also includes the transfer for compensation or value  
 274 of ownership or beneficial interest in a trust or other entity  
 275 that owns such policy if the trust or other entity was formed or  
 276 used for the principal purpose of acquiring one or more life  
 277 insurance contracts, which contract or contracts insure the life  
 278 of a person residing in this state. A viatical settlement  
 279 contract also includes a contract for a loan or other financial

280 transaction secured primarily by an individual or group life  
 281 insurance policy. The term "viatical settlement contract" does  
 282 not include, other than a policy loan by a life insurance  
 283 company pursuant to the terms of the life insurance contract or  
 284 accelerated death provisions contained in a life insurance  
 285 policy, whether issued with the original policy or as a rider,  
 286 or a loan secured by the cash surrender value of a policy as  
 287 determined by the policy issuer and the life insurance policy  
 288 terms, or any loan or advance from the issuer of the policy to  
 289 the policyowner.

290 (14)~~(11)~~ "Viatical settlement investment" has the same  
 291 meaning as specified in s. 517.021.

292 (15)~~(12)~~ "Viatical settlement provider" means a person  
 293 who, in this state, from this state, or with a resident of this  
 294 state, effectuates a viatical settlement contract. The term does  
 295 not include:

296 (a) Any bank, savings bank, savings and loan association,  
 297 or credit union,~~or other licensed lending institution~~ that  
 298 takes an assignment of a life insurance policy as collateral for  
 299 a loan.

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

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

307 (d) A trust that meets the definition of a "related  
308 provider trust."

309 (e) A viator in this state.

310 (f) A financing entity.

311 (16)~~(13)~~ "Viaticated policy" means a life insurance  
312 policy, or a certificate under a group policy, which is the  
313 subject of a viatical settlement contract.

314 (17)~~(14)~~ "Viator" means the owner of a life insurance  
315 policy or a certificateholder under a group policy, which policy  
316 is not a previously viaticated policy, who enters or seeks to  
317 enter into a viatical settlement contract. This term does not  
318 include a viatical settlement provider or any person acquiring a  
319 policy or interest in a policy from a viatical settlement  
320 provider, nor does it include an independent third-party trustee  
321 or escrow agent.

322 Section 2. Subsections (2) and (3) of section 626.9913,  
323 Florida Statutes, are amended to read:

324 626.9913 Viatical settlement provider license continuance;  
325 annual report; fees;~~deposit.~~--

326 (2) (a) Annually, on or before March 1, the viatical  
327 settlement provider licensee shall file a statement containing  
328 information the commission requires and shall pay to the office  
329 a license fee in the amount of \$500.

330 (b) In addition to any other requirements, the annual  
331 statement shall specify:

332 1. The total number of unsettled viatical settlement  
333 contracts and corresponding total amount due viators on viatical  
334 settlement contracts that have been signed by the viator but

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335 have not been settled as of December 31 of the preceding  
336 calendar year, categorized by the number of days since the  
337 viator signed the contract for transactions regulated by this  
338 state.

339 2. The total number of policies purchased in any state,  
340 territory, or jurisdiction; total gross amount paid for policies  
341 purchased in any state, territory, or jurisdiction; and the  
342 total face value of policies purchased for the preceding  
343 calendar year and most recent 5 years in any state, territory,  
344 or jurisdiction.

345 3. The total number of policies purchased, total gross  
346 amount paid for policies purchased, total commissions or  
347 compensation paid for policies purchased, and total face value  
348 of policies purchased, allocated by state, territory, or  
349 jurisdiction.

350 4. The total amount of proceeds or compensation paid to  
351 policyowners, allocated by state, territory, or jurisdiction.

352 (c) After December 31, 2007, The annual statement shall  
353 include an annual audited financial statement of the viatical  
354 settlement provider prepared in accordance with generally  
355 accepted accounting principles by an independent certified  
356 public accountant covering a 12-month period ending on a day  
357 falling during the last 6 months of the preceding calendar year.  
358 If the audited financial statement has not been completed,  
359 however, the licensee shall include in its annual statement an  
360 unaudited financial statement for the preceding calendar year  
361 and an affidavit from an officer of the licensee stating that  
362 the audit has not been completed. In this event, the licensee

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363 shall submit the audited statement on or before June 1. The  
364 annual statement, due on or before March 1 each year, shall also  
365 provide the office with a report of all life expectancy  
366 providers who have provided life expectancies directly or  
367 indirectly to the viatical settlement provider for use in  
368 connection with a viatical settlement contract or a viatical  
369 settlement investment. A viatical settlement provider shall  
370 include in all statements filed with the office all information  
371 requested by the office regarding a related provider trust  
372 established by the viatical settlement provider. The office may  
373 require more frequent reporting. Failure to timely file the  
374 annual statement or the audited financial statement or to timely  
375 pay the license fee is grounds for immediate suspension of the  
376 license. The commission may by rule require all or part of the  
377 statements or filings required under this section to be  
378 submitted by electronic means in a computer-readable form  
379 compatible with the electronic data format specified by the  
380 commission.

381 (3) To ensure the faithful performance of its obligations  
382 to its viators in the event of insolvency or the loss of its  
383 license, a viatical settlement provider licensee must deposit  
384 and maintain deposited in trust with the department securities  
385 eligible for deposit under s. 625.52, having at all times a  
386 value of not less than \$100,000; ~~however, a viatical settlement~~  
387 ~~provider licensed in this state prior to June 1, 2004, which has~~  
388 ~~deposited and maintains continuously deposited in trust with the~~  
389 ~~department securities in the amount of \$25,000 and which posted~~  
390 ~~and maintains continuously posted a security bond acceptable to~~

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391 ~~the department in the amount of \$75,000, has until June 1, 2005,~~  
 392 ~~to comply with the requirements of this subsection.~~

393 Section 3. Subsections (1) and (2) of section 626.9914,  
 394 Florida Statutes, are amended to read:

395 626.9914 Suspension, revocation, denial, or nonrenewal of  
 396 viatical settlement provider license; grounds; administrative  
 397 fine.--

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

401 (a) Has made a misrepresentation in the application for  
 402 the license;

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

406 (c) Demonstrates a pattern of unreasonable payments to  
 407 viators;

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

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

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

416 (g) Deals in bad faith with viators;

417 (h) Has violated any provision of the insurance code or of  
 418 this act;

419 (i) Employs any person who materially influences the  
 420 licensee's conduct and who fails to meet the requirements of  
 421 this act;

422 (j) No longer meets the requirements for initial  
 423 licensure; ~~or~~

424 (k) Obtains or utilizes life expectancies from life  
 425 expectancy providers who are not registered with the office  
 426 pursuant to this act; or

427 (1) Has engaged in a fraudulent viatical settlement act.

428 (2) The office may, in lieu of or in addition to any  
 429 suspension or revocation, assess an administrative fine not to  
 430 exceed \$10,000 ~~\$2,500~~ for each nonwillful violation or \$25,000  
 431 ~~\$10,000~~ for each willful violation by a viatical settlement  
 432 provider licensee. The office may also place a viatical  
 433 settlement provider licensee on probation for a period not to  
 434 exceed 2 years.

435 Section 4. Subsection (1) of section 626.99175, Florida  
 436 Statutes, is amended to read:

437 626.99175 Life expectancy providers; registration  
 438 required; denial, suspension, revocation.--

439 (1) ~~After July 1, 2006,~~ A person may not perform the  
 440 functions of a life expectancy provider without first having  
 441 registered as a life expectancy provider, ~~except as provided in~~  
 442 ~~subsection (6).~~

443 Section 5. Section 626.99185, Florida Statutes, is created  
 444 to read:

445 626.99185 Disclosures to viator of disbursement.--



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446 (1) Prior to or concurrently with a viator's execution of  
447 a viatical settlement contract, the viatical settlement provider  
448 shall provide to the viator, in duplicate, a disclosure  
449 statement in legible written form disclosing:

450 (a) The name of each viatical settlement broker who  
451 receives or is to receive compensation and the amount of each  
452 broker's compensation related to that transaction. For the  
453 purpose of this subsection, compensation includes anything of  
454 value paid or given by or at the direction of a viatical  
455 settlement provider or person acquiring an interest in one or  
456 more life insurance policies to a viatical settlement broker in  
457 connection with the viatical settlement contract.

458 (b) A complete reconciliation of the gross offer or bid by  
459 the viatical settlement provider to the net amount of proceeds  
460 or value to be received by the viator related to that  
461 transaction. The terms "gross offer" or "bid" means the total  
462 amount or value offered by the viatical settlement provider for  
463 the purchase of an interest in one or more life insurance  
464 policies, inclusive of commissions, compensation, or other  
465 proceeds or value being deducted from the gross offer or bid.

466 (2) The disclosure statement shall be signed and dated by  
467 the viator prior to or concurrently with the viator's execution  
468 of a viatical settlement contract with the duplicate copy of the  
469 disclosure statement to be retained by the viator.

470 (3) If a viatical settlement contract has been entered  
471 into and the contract is subsequently amended or if there is any  
472 change in the viatical settlement provider's gross offer or bid  
473 amount, change in the net amount of proceeds or value to be

474 received by the viator, or change in the information provided in  
 475 the disclosure statement to the viator, the viatical settlement  
 476 provider shall provide, in duplicate, an amended disclosure  
 477 statement to the viator containing the information in subsection  
 478 (1). The amended disclosure statement shall be signed and dated  
 479 by the viator with the duplicate copy of the amended disclosure  
 480 statement to be retained by the viator. The viatical settlement  
 481 provider shall obtain the signed and dated amended disclosure  
 482 statement.

483 (4) Prior to a viatical settlement provider's execution of  
 484 a viatical settlement contract, the viatical settlement provider  
 485 must have obtained the signed and dated disclosure statement and  
 486 any amended disclosure statement required by this section. In  
 487 transactions for which no broker is used, the viatical  
 488 settlement provider must have obtained the signed and dated  
 489 disclosure statement from the viator.

490 (5) The viatical settlement provider shall maintain the  
 491 documentation required by this section pursuant to the  
 492 provisions set forth in s. 626.9922(2) and shall make such  
 493 documentation available to the office at any time for copying  
 494 and inspection upon reasonable notice by the office to the  
 495 viatical settlement provider.

496 Section 6. Subsection (7) of section 626.9924, Florida  
 497 Statutes, is amended to read:

498 626.9924 Viatical settlement contracts; procedures;  
 499 rescission.--

500 (7) At any time during the contestable period, within 20  
 501 days after a viator executes documents necessary to transfer

502 rights under an insurance policy or within 20 days of any  
 503 agreement, option, promise, or any other form of understanding,  
 504 express or implied, to viaticate the policy, the provider must  
 505 give notice to the insurer of the policy that the policy has or  
 506 will become a viaticated policy. ~~The notice must be accompanied~~  
 507 ~~by the documents required by s. 626.99287(5)(a) in their~~  
 508 ~~entirety.~~

509 Section 7. Subsection (2) of section 626.99245, Florida  
 510 Statutes, is amended to read:

511 626.99245 Conflict of regulation of viaticals.--

512 (2) This section does not affect the requirement of ss.  
 513 626.9911(15)~~(12)~~ and 626.9912(1) that a viatical settlement  
 514 provider doing business from this state must obtain a viatical  
 515 settlement license from the office. As used in this subsection,  
 516 the term "doing business from this state" includes effectuating  
 517 viatical settlement contracts from offices in this state,  
 518 regardless of the state of residence of the viator.

519 Section 8. Section 626.99273, Florida Statutes, is created  
 520 to read:

521 626.99273 Prohibited practices and conflicts of  
 522 interest.--

523 (1) With respect to any viatical settlement contract or  
 524 insurance policy, a viatical settlement broker may not knowingly  
 525 solicit an offer from, effectuate a viatical settlement with, or  
 526 make a sale to any viatical settlement provider, financing  
 527 entity, or related provider trust that is controlling,  
 528 controlled by, or under common control with such viatical  
 529 settlement broker.

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530       (2) With respect to any viatical settlement contract or  
531 insurance policy, a viatical settlement provider may not  
532 knowingly enter into a viatical settlement contract with a  
533 viator if, in connection with such viatical settlement contract,  
534 anything of value will be paid to a viatical settlement broker  
535 that is controlling, controlled by, or under common control with  
536 such viatical settlement provider, financing entity, or related  
537 provider trust that is involved in such viatical settlement  
538 contract.

539       (3) A violation of subsection (1) or subsection (2) is a  
540 fraudulent viatical settlement act.

541       (4) A viatical settlement provider may not enter into a  
542 viatical settlement contract unless the viatical settlement  
543 promotional, advertising, and marketing materials, as may be  
544 prescribed by rule, have been filed with the office. In no event  
545 may any marketing materials expressly indicate that the  
546 insurance is free for any period of time. The inclusion of any  
547 reference in the marketing materials that would cause a viator  
548 to reasonably believe that the insurance is free for any period  
549 of time is a violation of this section.

550       (5) A life insurance producer, insurer, viatical  
551 settlement broker, or viatical settlement provider may not make  
552 any statement or representation to an applicant or policyholder  
553 in connection with the sale of a life insurance policy to the  
554 effect that the insurance is free or without cost to the  
555 policyholder for any period of time.

556       Section 9. Section 626.99275, Florida Statutes, is amended  
557 to read:

558 |           626.99275 Prohibited practices; penalties.--

559 |           (1) It is unlawful for any person to:

560 |           (a) ~~¶~~ Knowingly enter into, broker, or otherwise deal in  
 561 | a viatical settlement contract the subject of which is a life  
 562 | insurance policy, knowing that the policy was obtained by  
 563 | presenting materially false information concerning any fact  
 564 | material to the policy or by concealing, for the purpose of  
 565 | misleading another, information concerning any fact material to  
 566 | the policy, where the viator or the viator's agent intended to  
 567 | defraud the policy's issuer.

568 |           (b) ~~¶~~ Knowingly or with the intent to defraud, for the  
 569 | purpose of depriving another of property or for pecuniary gain,  
 570 | issue or use a pattern of false, misleading, or deceptive life  
 571 | expectancies.

572 |           (c) ~~¶~~ Knowingly engage in any transaction, practice, or  
 573 | course of business intending thereby to avoid the notice  
 574 | requirements of s. 626.9924(7).

575 |           (d) ~~¶~~ Knowingly or intentionally facilitate the change of  
 576 | state of residency of a viator to avoid the provisions of this  
 577 | chapter.

578 |           (e) Engage in a fraudulent viatical settlement act.

579 |           (2) A person who violates any provision of this section  
 580 | commits:

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

584 |           (b) A felony of the second degree, punishable as provided  
 585 | in s. 775.082, s. 775.083, or s. 775.084, if the insurance

586 policy involved is valued at \$20,000 or more, but less than  
 587 \$100,000.

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

591 (3) It is a violation of this section for any person to  
 592 enter into a viatical settlement contract at any time prior to  
 593 the application or issuance of a policy that is the subject of a  
 594 viatical settlement contract or within a 5-year period  
 595 commencing with the date of issuance of the insurance policy or  
 596 certificate, unless the viator provides a sworn affidavit and  
 597 accompanying documentation that certifies to the viatical  
 598 settlement provider that one or more of the following conditions  
 599 have been met within the 5-year period:

600 (a) The policy was issued upon the viator's exercise of  
 601 conversion rights arising out of a group or individual policy,  
 602 provided the total of the time covered under the conversion  
 603 policy plus the time covered under the prior policy is at least  
 604 60 months. The time covered under a group policy shall be  
 605 calculated without regard to any change in insurance carriers,  
 606 provided the coverage has been continuous and under the same  
 607 group sponsorship;

608 (b) The viator submits independent evidence to the  
 609 viatical settlement provider that one or more of the following  
 610 conditions have been met within the 5-year period:

- 611 1. The viator or insured is terminally or chronically ill;
- 612 2. The viator's spouse dies;
- 613 3. The viator divorces his or her spouse;

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- 614        4. The viator retires from full-time employment;  
615        5. The viator becomes physically or mentally disabled and  
616 a physician determines that the disability prevents the viator  
617 from maintaining full-time employment; or  
618        6. A final order, judgment, or decree is entered by a  
619 court of competent jurisdiction, upon the application by a  
620 viator's creditor, adjudicating the viator bankrupt or insolvent  
621 or approving a petition seeking reorganization of the viator or  
622 appointing a receiver, trustee, or liquidator to all or a  
623 substantial part of the viator's assets; or  
624        (c) The viator enters into a viatical settlement contract  
625 more than 2 years after a policy's issuance date and, with  
626 respect to the policy, at all times prior to such date the  
627 following conditions are met:  
628        1. Policy premiums have been funded exclusively with  
629 unencumbered assets, including an interest in the life insurance  
630 policy being financed only to the extent of its net cash  
631 surrender value provided by, or full recourse liability incurred  
632 by, the insured.  
633        2. There is no agreement or understanding with any other  
634 person to guarantee any such liability or to purchase, or be  
635 ready to purchase, the policy, including through an assumption  
636 or forgiveness of the loan.  
637        3. Neither the insured nor the policy has been evaluated  
638 for settlement.  
639        (4) It is a violation of this section for any person to  
640 issue, solicit, market, or otherwise promote the purchase of a

641 policy for the purpose of or with an emphasis on selling the  
 642 policy.

643 Section 10. Section 626.99276, Florida Statutes, is  
 644 created to read:

645 626.99276 Notification to insurer required.--

646 (1) A copy of the sworn affidavit and the documentation  
 647 required in s. 626.99275(3) shall be submitted to the insurer  
 648 when the viatical settlement provider or other party entering  
 649 into a viatical settlement contract with a viator submits a  
 650 request to the insurer for verification of coverage. The copy  
 651 shall be accompanied by a sworn affidavit from the viatical  
 652 settlement provider affirming that the copy is a true and  
 653 correct copy of the documents received by the viatical  
 654 settlement provider.

655 (2) If the viatical settlement provider submits to the  
 656 insurer a copy of the owner's or insured's certification  
 657 described in and the independent evidence required by s.  
 658 626.99275(3) when the provider submits a request to the insurer  
 659 to effect the transfer of the policy or certificate to the  
 660 viatical settlement provider, the copy conclusively establishes  
 661 that the viatical settlement contract satisfies the requirements  
 662 of this section and the insurer shall timely respond to the  
 663 request.

664 (3) An insurer may not require, as a condition of  
 665 responding to a request for verification of coverage or  
 666 effecting the transfer of a policy pursuant to a viatical  
 667 settlement contract, that the viator, insured, viatical  
 668 settlement provider, or viatical settlement broker sign any



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669 forms, disclosures, consent, or waiver form that has not been  
670 expressly approved by the office for use in connection with  
671 viatical settlement contracts in this state.

672 (4) Upon receipt of a properly completed request for  
673 change of ownership or beneficiary of a policy, the insurer  
674 shall respond in writing within 30 calendar days with written  
675 acknowledgement confirming that the change has been effectuated  
676 or specifying the reasons why the requested change cannot be  
677 processed. The insurer may not unreasonably delay effectuating  
678 change of ownership or beneficiary and may not otherwise seek to  
679 interfere with any viatical settlement contract lawfully entered  
680 into in this state.

681 Section 11. Section 626.99278, Florida Statutes, is  
682 amended to read:

683 626.99278 Viatical provider anti-fraud plan.--

684 (1) Every licensed viatical settlement provider and  
685 registered life expectancy provider must adopt an anti-fraud  
686 plan and file it with the Division of Insurance Fraud of the  
687 department. Each anti-fraud plan shall include:

688 (a)~~(1)~~ A description of the procedures for detecting and  
689 investigating possible fraudulent acts and procedures for  
690 resolving material inconsistencies between medical records and  
691 insurance applications.

692 (b)~~(2)~~ A description of the procedures for the mandatory  
693 reporting of possible fraudulent insurance acts and prohibited  
694 practices set forth in s. 626.99275 to the Division of Insurance  
695 Fraud of the department.

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

698        ~~(d)(4)~~ A written description or chart outlining the  
699 organizational arrangement of the anti-fraud personnel who are  
700 responsible for the investigation and reporting of possible  
701 fraudulent insurance acts and for the investigation of  
702 unresolved material inconsistencies between medical records and  
703 insurance applications.

704        ~~(e)(5)~~ For viatical settlement providers, a description of  
705 the procedures used to perform initial and continuing review of  
706 the accuracy of life expectancies used in connection with a  
707 viatical settlement contract or viatical settlement investment.

708        (2) Every licensed viatical settlement provider shall  
709 establish and maintain in accordance with the provisions of s.  
710 626.9922:

711        (a) Documentation of compliance with its anti-fraud plan  
712 and procedures filed in accordance with this section.

713        (b) Documentation pertaining to resolved and unresolved  
714 material inconsistencies between medical records and insurance  
715 applications.

716        (c) Documentation pertaining to the mandatory reporting of  
717 possible fraudulent acts and prohibited practices set forth in  
718 s. 626.99275 to the Division of Insurance Fraud of the  
719 department.

720        Section 12. Section 626.99289, Florida Statutes, is  
721 created to read:

722        626.99289 Void and unenforceable contracts, agreements,  
723 arrangements, and transactions.--Any contract, agreement,

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724 arrangement, or transaction, including, but not limited to, any  
725 financing agreement or any other arrangement or understanding  
726 entered into, whether written or verbal, for the furtherance or  
727 aid of a stranger-originated life insurance act, practice,  
728 arrangement, or agreement is void and unenforceable.

729 Section 13. Section 626.99287, Florida Statutes, is  
730 repealed.

731 Section 14. This act shall take effect July 1, 2009.