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1 A bill to be entitled
2 An act relating to viatical settlements; amending s.
3 626.9911, F.S.; limiting the definition of "life
4 expectancy provider" to those determining life
5 expectancies for the purpose of a viatical settlement
6 contract governed by state law; defining the terms
7 "premium finance loan" and "stranger-originated life
8 insurance"; modifying the definition of "viatical
9 settlement contract" to include additional transactions
10 and specify transactions not constituting such a contract;
11 conforming other definitions to changes made by the act;
12 amending s. 626.9913, F.S.; requiring that a viatical
13 settlement provider annually file a statement containing
14 information required by state law on or before a specified
15 date; providing requirements for such statements;
16 authorizing the Office of Insurance Regulation to adopt
17 rules; amending s. 626.9914, F.S.; clarifying grounds for
18 which the office may suspend, revoke, deny, or refuse to
19 renew the license of a viatical settlement provider;
20 amending s. 626.99175, F.S.; prohibiting a person from
21 performing the functions of a life expectancy provider
22 regarding viatical settlement contracts without first
23 having registered as a life expectancy provider; amending
24 s. 626.992, F.S.; clarifying restrictions on the use of
25 viatical settlement brokers, viatical settlement
26 providers, and registered life expectancy providers;
27 clarifying a requirement that a person operating as a life
28 expectancy provider register as such; amending s.

29 | 626.9922, F.S.; limiting the scope of an examination of
30 | the business affairs of certain licensees by the office or
31 | Department of Financial Services; clarifying provisions
32 | relating to parties to whom such examination requirements
33 | apply; creating s. 626.99234, F.S.; authorizing insurers
34 | to make certain inquiries to an applicant for a life
35 | insurance policy; authorizing an insurer to reject certain
36 | applications; prohibiting an insurer from rejecting an
37 | application solely because the premiums will be financed
38 | under certain circumstances; authorizing an insurer to
39 | make certain disclosures to an applicant; authorizing an
40 | insurer to require certain certifications from an
41 | applicant or insured; amending s. 626.9924, F.S.;
42 | requiring that a viatical settlement provider obtain a
43 | witnessed document containing certain provisions before
44 | the execution of a viatical settlement contract; providing
45 | for the use of a third-party trustee or escrow agent
46 | during a viatical settlement transaction; amending s.
47 | 626.99245, F.S.; deleting provisions requiring the
48 | maintenance of certain records from viatical settlement
49 | transactions completed in other states; amending s.
50 | 626.9925, F.S.; deleting a provision authorizing the
51 | Financial Services Commission to adopt rules defining
52 | terms for use in the Viatical Settlement Act; amending s.
53 | 626.99275, F.S.; prohibiting any person from engaging in
54 | stranger-originated life insurance; providing penalties;
55 | amending s. 626.99287, F.S.; providing that a viatical

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56 settlement contract is void under certain circumstances;
 57 providing an effective date.

58

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

60

61 Section 1. Section 626.9911, Florida Statutes, is amended
 62 to read:

63 626.9911 Definitions.--As used in this act, the term:

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

78 (2) "Independent third-party trustee or escrow agent"
 79 means an attorney, certified public accountant, financial
 80 institution, or other person providing escrow services under the
 81 authority of a regulatory body. The term does not include any
 82 person associated, affiliated, or under common control with a
 83 viatical settlement provider or viatical settlement broker.

84 (3) "Life expectancy" means an opinion or evaluation as to
 85 how long a particular person is to live, or relating to such
 86 person's expected demise regarding a viatical settlement
 87 contract.

88 (4) "Life expectancy provider" means a person who
 89 determines, or holds himself or herself out as determining, life
 90 expectancies or mortality ratings used to determine life
 91 expectancies for the purposes of a viatical settlement contract
 92 governed by state law:

93 (a) On behalf of a viatical settlement provider, viatical
 94 settlement broker, life agent, or person engaged in the business
 95 of viatical settlements;

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

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

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

101 (6) "Premium finance loan" means a loan made primarily for
 102 the purpose of making premium payments on a life insurance
 103 policy issued or to be issued to a resident of this state, which
 104 loan is secured by an interest in such life insurance policy.

105 ~~(7)~~ (6) "Related form" means any form, created by or on
 106 behalf of a licensee, which a viator is required to sign or
 107 initial. The forms include, but are not limited to, a power of
 108 attorney, a release of medical information form, a suitability
 109 questionnaire, a disclosure document, or any addendum, schedule,
 110 or amendment to a viatical settlement contract considered
 111 necessary by a provider to effectuate a viatical settlement

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112 transaction.

113 (8)~~(7)~~ "Related provider trust" means a titling trust or
114 other trust established by a licensed viatical settlement
115 provider or financing entity for the sole purpose of holding the
116 ownership or beneficial interest in purchased policies in
117 connection with a financing transaction. The trust must have a
118 written agreement with a licensed viatical settlement provider
119 or financing entity under which the licensed viatical settlement
120 provider or financing entity is responsible for insuring
121 compliance with all statutory and regulatory requirements and
122 under which the trust agrees to make all records and files
123 relating to viatical settlement transactions available to the
124 office as if those records and files were maintained directly by
125 the licensed viatical settlement provider. This term does not
126 include an independent third-party trustee or escrow agent or a
127 trust that does not enter into agreements with a viator. A
128 related provider trust shall be subject to all provisions of
129 this act that apply to the viatical settlement provider who
130 established the related provider trust, except s. 626.9912,
131 which shall not be applicable. A viatical settlement provider
132 may establish no more than one related provider trust, and the
133 sole trustee of such related provider trust shall be the
134 viatical settlement provider licensed under s. 626.9912. The
135 name of the licensed viatical settlement provider shall be
136 included within the name of the related provider trust.

137 (9)~~(8)~~ "Special purpose entity" means an entity
138 established by a licensed viatical settlement provider or by a
139 financing entity, which may be a corporation, partnership,

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140 trust, limited liability company, or other similar entity formed
141 solely to provide, either directly or indirectly, access to
142 institutional capital markets to a viatical settlement provider
143 or financing entity. A special purpose entity may not obtain
144 capital from any natural person or entity with less than \$50
145 million in assets and may not enter into a viatical settlement
146 contract.

147 (10) "Stranger-originated life insurance" or "STOLI" means
148 an act, practice, or arrangement to initiate the issuance of a
149 life insurance policy in this state for the benefit of a third-
150 party investor who, at the time of policy origination, has no
151 insurable interest under the laws of this state in the life of
152 the insured. STOLI practices include, but are not limited to,
153 cases in which life insurance is purchased with resources or
154 guarantees from or through a person or entity, that, at the time
155 of inception of the policy, could not lawfully initiate the
156 policy himself, herself, or itself, and where, at the time of
157 inception, there is an arrangement or agreement to directly or
158 indirectly transfer the ownership of the policy or the policy's
159 benefits to a third party. Trusts created to give the appearance
160 of insurable interest and used to initiate policies for
161 investors violate insurable interest laws and the prohibition
162 against wagering on life. STOLI arrangements do not include
163 otherwise lawful viatical settlement contracts as permitted by
164 state law or those acts, practices, or arrangements set forth in
165 paragraph (12) (c).

166 (11)~~(9)~~ "Viatical settlement broker" means a person who,
167 on behalf of a viator and for a fee, commission, or other

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168 | valuable consideration, offers or attempts to negotiate viatical
169 | settlement contracts between a viator resident in this state and
170 | one or more viatical settlement providers. Notwithstanding the
171 | manner in which the viatical settlement broker is compensated, a
172 | viatical settlement broker is deemed to represent only the
173 | viator and owes a fiduciary duty to the viator to act according
174 | to the viator's instructions and in the best interest of the
175 | viator. The term does not include an attorney, licensed
176 | Certified Public Accountant, or investment adviser lawfully
177 | registered under chapter 517, who is retained to represent the
178 | viator and whose compensation is paid directly by or at the
179 | direction and on behalf of the viator.

180 | (12)~~(10)~~ "Viatical settlement contract" means:

181 | (a) A written agreement entered into between a viatical
182 | settlement provider, or its related provider trust, and a viator
183 | who is a resident of this state. The viatical settlement
184 | contract includes an agreement to transfer ownership or change
185 | the beneficiary designation of a life insurance policy at a
186 | later date, regardless of the date that compensation is paid to
187 | the viator. The agreement must establish the terms under which
188 | the viatical settlement provider will pay compensation or
189 | anything of value, which compensation or value is less than the
190 | expected death benefit of the insurance policy or certificate,
191 | in return for the viator's assignment, transfer, sale, devise,
192 | or bequest of the death benefit or ownership of all or a portion
193 | of the insurance policy or certificate of insurance to the
194 | viatical settlement provider.

195 | (b) A viatical settlement contract also includes:

196 1. The transfer for compensation or value of ownership or
 197 beneficial interest in a trust or other entity owning such
 198 policy if the trust or other entity was formed or availed of for
 199 the principal purpose of acquiring one or more life insurance
 200 contracts owned by a resident of this state.

201 2. A premium finance loan made for a policy on or before
 202 the date of issuance of the policy if one or more of the
 203 following conditions apply:

204 a. The loan proceeds are not used solely to pay premiums
 205 for the policy and any costs or expenses incurred by the lender
 206 or the borrower in connection with the financing.

207 b. The owner receives on the date of the origination of
 208 the premium-finance loan a guarantee of the future viatical
 209 settlement value of the policy.

210 c. The owner agrees on the date of origination of the
 211 premium finance loan to sell the policy or any portion of the
 212 policy's death benefit on any date following the issuance of the
 213 policy, not including an agreement to sell the policy in the
 214 event of a default, if the default is not pursuant to an
 215 agreement or understanding with any other person for the purpose
 216 of evading regulation under this act.

217 (c) A viatical settlement contract does not include:

218 1. A policy loan by a life insurance company pursuant to
 219 the terms of the life insurance policy or accelerated death
 220 provisions contained in the life insurance policy issued with
 221 the original policy or as a rider.

222 2. A premium finance loan or any loan made by a bank or
 223 other licensed financial institution, if neither party defaults

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224 on such loan or the transfer of the policy in connection with
225 such default is pursuant to an agreement or understanding with
226 any other person for the purpose of evading regulation under
227 this act.

228 3. A collateral assignment of a life insurance policy by
229 an owner of a policy.

230 4. A loan made by a lender which is not described in
231 subparagraph (b)2. and is not otherwise within the scope of the
232 definition of viatical settlement contract.

233 5. An agreement for which all of the parties satisfy at
234 least one of the following conditions:

235 a. The parties are closely related to the insured by blood
236 or law.

237 b. The parties have a lawful substantial economic interest
238 in the continued life, health, and bodily safety of the person
239 insured.

240 c. The parties are trusts established primarily for the
241 benefit of those parties.

242 6. Any designation, consent, or agreement by an insured
243 who is an employee of an employer in connection with the
244 purchase by the employer or by a trust established by the
245 employer of life insurance on the life of the employee.

246 7. A bona fide business succession planning arrangement
247 between:

248 a. One or more shareholders in a corporation;

249 b. A corporation and one or more of its shareholders or
250 one or more trusts established by its shareholders;

251 c. One or more partners in a partnership;

252 d. A partnership and one or more of its partners or one or
 253 more trusts established by its partners;

254 e. One or more members in a limited liability company; or

255 f. A limited liability company and one or more of its
 256 members or one or more trusts established by its members.

257 8. An agreement entered into by a service recipient or a
 258 trust established by the service recipient, or a service
 259 provider or a trust established by the service provider
 260 performing significant services for the service recipient's
 261 trade or business.

262 9. Any other contract, transaction, or arrangement that
 263 the commissioner determines is not of the type intended to be
 264 regulated by this act ~~a contract for a loan or other financial~~
 265 ~~transaction secured primarily by an individual or group life~~
 266 ~~insurance policy, other than a loan by a life insurance company~~
 267 ~~pursuant to the terms of the life insurance contract, or a loan~~
 268 ~~secured by the cash value of a policy.~~

269 ~~(13)-(11)~~ "Viatical settlement investment" has the same
 270 meaning as specified in s. 517.021.

271 ~~(14)-(12)~~ "Viatical settlement provider" means a person
 272 who, in this state, from this state, or with a resident of this
 273 state, effectuates a viatical settlement contract. The term does
 274 not include:

275 (a) Any bank, savings bank, savings and loan association,
 276 credit union, or other licensed lending institution that takes
 277 an assignment of a life insurance policy as collateral for a
 278 loan.

279 (b) A life and health insurer that has lawfully issued a

280 life insurance policy that provides accelerated benefits to
 281 terminally ill policyholders or certificateholders.

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

286 (d) A trust that meets the definition of a "related
 287 provider trust."

288 (e) A viator in this state.

289 (f) A financing entity.

290 ~~(15)-(13)~~ "Viaticated policy" means a life insurance
 291 policy, or a certificate under a group policy, which is the
 292 subject of a viatical settlement contract.

293 ~~(16)-(14)~~ "Viator" means a resident of this state who is
 294 the owner of a life insurance policy or a certificateholder
 295 under a group policy, which policy is not a previously
 296 viaticated policy, who enters or seeks to enter into a viatical
 297 settlement contract. This term does not include a viatical
 298 settlement provider or any person acquiring a policy or interest
 299 in a policy from a viatical settlement provider, nor does it
 300 include an independent third-party trustee or escrow agent.

301 Section 2. Subsection (2) of section 626.9913, Florida
 302 Statutes, is amended to read:

303 626.9913 Viatical settlement provider license continuance;
 304 annual report; fees; deposit.--

305 (2) Annually, on or before March 1, the viatical
 306 settlement provider licensee shall file a statement containing
 307 information required by statute ~~the commission requires~~ and

308 shall pay to the office a license fee in the amount of \$500.
 309 After December 31, 2007, the annual statement shall include an
 310 annual audited financial statement of the viatical settlement
 311 provider prepared in accordance with generally accepted
 312 accounting principles by an independent certified public
 313 accountant covering a 12-month period ending on a day falling
 314 during the last 6 months of the preceding calendar year. If the
 315 audited financial statement has not been completed, however, the
 316 licensee shall include in its annual statement an unaudited
 317 financial statement for the preceding calendar year and an
 318 affidavit from an officer of the licensee stating that the audit
 319 has not been completed. In this event, the licensee shall submit
 320 the audited statement on or before June 1. The audited and
 321 unaudited financial statements are subject to the provisions of
 322 chapter 688 and ss. 812.081 and 815.045 and may be protected as
 323 trade secrets. The annual statement, due on or before March 1
 324 each year, shall also provide the office with a report of all
 325 life expectancy providers who have provided life expectancies
 326 ~~directly or indirectly~~ to the viatical settlement provider for
 327 use in connection with a viatical settlement contract ~~or a~~
 328 ~~viatical settlement investment~~. A viatical settlement provider
 329 shall include in all statements filed with the office all
 330 information requested by the office regarding a related provider
 331 trust established by the viatical settlement provider. The
 332 office may adopt rules requiring that the annual statement
 333 contain information, in the aggregate, regarding viatical
 334 settlement contracts entered into with a resident of this state.
 335 ~~The office may require more frequent reporting.~~ Failure to

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336 timely file the annual statement or the audited financial
337 statement or to timely pay the license fee is grounds for
338 immediate suspension of the license. The commission may by rule
339 require all or part of the statements or filings required under
340 this section to be submitted by electronic means in a computer-
341 readable form compatible with the electronic data format
342 specified by the commission.

343 Section 3. Subsection (1) of section 626.9914, Florida
344 Statutes, is amended to read:

345 626.9914 Suspension, revocation, denial, or nonrenewal of
346 viatical settlement provider license; grounds; administrative
347 fine.--

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

351 (a) Has made a misrepresentation in the application for
352 the license;

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

356 (c) Demonstrates a pattern of unreasonable payments to
357 viators;

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

362 (e) Has issued viatical settlement contracts using a
363 viatical settlement contract form that has ~~have~~ not been

364 approved pursuant to this act;

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

367 (g) Deals in bad faith with viators;

368 (h) Has violated any provision of the insurance code or of
369 this act;

370 (i) Employs any person who materially influences the
371 licensee's conduct and who fails to meet the requirements of
372 this act;

373 (j) No longer meets the requirements for initial
374 licensure; or

375 (k) Obtains or utilizes life expectancies regarding
376 viatical settlement contracts from life expectancy providers who
377 are not registered with the office pursuant to this act.

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

380 626.99175 Life expectancy providers; registration
381 required; denial, suspension, revocation.--

382 (1) ~~After July 1, 2006,~~ A person may not perform the
383 functions of a life expectancy provider regarding viatical
384 settlement contracts without first having registered as a life
385 expectancy provider, except as provided in subsection (6).

386 Section 5. Section 626.992, Florida Statutes, is amended
387 to read:

388 626.992 Use of licensed viatical settlement providers,
389 viatical settlement brokers, and registered life expectancy
390 providers required.--

391 (1) A licensed viatical settlement provider may not use

392 any person to perform the functions of a viatical settlement
 393 broker as defined in this act regarding a viatical settlement
 394 contract unless such person holds a current, valid life agent
 395 license and has appointed himself or herself in conformance with
 396 this chapter.

397 (2) A viatical settlement broker may not use any person to
 398 perform the functions of a viatical settlement provider as
 399 defined in this act regarding a viatical settlement contract
 400 unless such person holds a current, valid license as a viatical
 401 settlement provider.

402 (3) ~~After July 1, 2006,~~ A person may not operate as a life
 403 expectancy provider regarding a viatical settlement contract
 404 unless such person is registered as a life expectancy provider
 405 pursuant to this act.

406 (4) ~~After July 1, 2006,~~ A viatical settlement provider,
 407 viatical settlement broker, or any other person in the business
 408 of viatical settlements may not obtain life expectancies
 409 regarding a viatical settlement contract from a person who is
 410 not registered as a life expectancy provider pursuant to this
 411 act.

412 Section 6. Subsections (1), (2), (4), and (7) of section
 413 626.9922, Florida Statutes, are amended to read:

414 626.9922 Examination.--

415 (1) The office or department may examine the business and
 416 affairs of any of its respective licensees or applicants for a
 417 license. The office or department may order any such licensee or
 418 applicant to produce any records, books, files, advertising and
 419 solicitation materials, or other information and may take

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420 statements under oath to determine whether the licensee or
421 applicant is in violation of the law or is acting contrary to
422 the public interest. With respect to licensees, the examination
423 is limited to information regarding viatical settlement
424 contracts executed in this state, from this state, or with a
425 resident of this state. The expenses incurred in conducting any
426 examination or investigation must be paid by the licensee or
427 applicant. Examinations and investigations must be conducted as
428 provided in chapter 624, and licensees are subject to all
429 applicable provisions of the insurance code.

430 (2) All accounts, books and records, documents, files,
431 contracts, and other information relating to all transactions of
432 viatical settlement contracts, or life expectancies regarding
433 viatical settlement contracts, ~~or viatical settlement purchase~~
434 ~~agreements made before July 1, 2005,~~ must be maintained by the
435 licensee for a period of at least 3 years after the death of the
436 insured and must be available to the office or department for
437 inspection during reasonable business hours.

438 (4) Such information ~~The originals of records~~ required to
439 be maintained under this section must be made available to the
440 office or department for examination at the office's or
441 department's request.

442 (7) Subsections (1), (2), (3), and (4) apply to life
443 expectancy providers providing life expectancies regarding
444 viatical settlement contracts in the state and providing life
445 expectancies regarding viatical settlement contracts to viatical
446 settlement providers in the state, as if life expectancy
447 providers were licensees.

448 Section 7. Section 626.99234, Florida Statutes, is created
 449 to read:

450 626.99234 Disclosures by insurers.--In addition to other
 451 questions that an insurance carrier may lawfully pose to an
 452 applicant for a life insurance policy, insurance carriers may
 453 inquire in the application as to whether the proposed owner
 454 intends to pay premiums with the assistance of financing from a
 455 lender that will use the policy as collateral to support the
 456 financing.

457 (1) If the premium finance loan provides funds that can be
 458 used for a purpose other than paying for the premiums, costs,
 459 and expenses associated with obtaining and maintaining the life
 460 insurance policy and loan, the application shall be rejected as
 461 a prohibited practice under this act.

462 (2) If the financing does not violate subsection (1) or
 463 the insurer's lawful underwriting guidelines, the insurer may
 464 not reject the life insurance application solely because the
 465 premiums will be financed.

466 (3) The insurance carrier may make a disclosure to the
 467 applicant, either on the application or an amendment to the
 468 application to be completed no later than the date of delivery
 469 of the policy, including, but not limited to, the following:

470 IF YOU HAVE ENTERED INTO A LOAN ARRANGEMENT IN WHICH
 471 THE POLICY IS USED AS COLLATERAL AND THE POLICY
 472 CHANGES OWNERSHIP AT SOME POINT IN THE FUTURE IN
 473 SATISFACTION OF THE LOAN, YOU SHOULD BE AWARE THAT A
 474 CHANGE OF OWNERSHIP COULD LEAD TO A STRANGER OWNING AN
 475 INTEREST IN THE INSURED'S LIFE AND COULD IN THE FUTURE

476 LIMIT YOUR ABILITY TO PURCHASE INSURANCE ON THE
 477 INSURED'S LIFE BECAUSE THERE IS A LIMIT AS TO HOW MUCH
 478 COVERAGE INSURERS WILL ISSUE ON A LIFE. YOU SHOULD
 479 CONSULT A PROFESSIONAL ADVISOR SINCE A CHANGE IN
 480 OWNERSHIP IN SATISFACTION OF THE LOAN MAY RESULT IN
 481 TAX CONSEQUENCES TO THE OWNER, DEPENDING ON THE
 482 STRUCTURE OF THE LOAN.

483 (4) In addition to the disclosures in subsection (3), the
 484 insurance carrier may require any of the following
 485 certifications from the applicant or the insured:

486 (a) I HAVE NOT ENTERED INTO ANY AGREEMENT OR ARRANGEMENT
 487 UNDER WHICH I HAVE AGREED TO MAKE A FUTURE SALE OF THIS LIFE
 488 INSURANCE POLICY.

489 (b) MY LOAN ARRANGEMENT FOR THIS POLICY PROVIDES FUNDS
 490 SUFFICIENT TO PAY FOR SOME OR ALL OF THE PREMIUMS, COSTS, AND
 491 EXPENSES ASSOCIATED WITH OBTAINING AND MAINTAINING MY LIFE
 492 INSURANCE POLICY, BUT I HAVE NOT ENTERED INTO ANY AGREEMENT
 493 PURSUANT TO WHICH I AM TO RECEIVE CONSIDERATION IN EXCHANGE FOR
 494 PROCURING THIS POLICY.

495 (c) THE BORROWER HAS AN INSURABLE INTEREST IN THE INSURED.

496 Section 8. Subsections (1) and (3) of section 626.9924,
 497 Florida Statutes, are amended to read:

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

500 (1) Before the execution of a viatical settlement contract
 501 by all parties, the ~~A~~ viatical settlement provider entering into
 502 a viatical settlement contract with any viator must first obtain
 503 a witnessed document in which the viator consents to the

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504 viatical settlement contract, represents that he or she has a
505 full and complete understanding of the viatical settlement
506 contract and the benefits of the life insurance policy, releases
507 his or her medical records, and acknowledges that he or she is
508 entering ~~has entered~~ into the viatical settlement contract
509 freely and voluntarily.

510 (3) A viatical settlement transaction may be completed
511 only through the use of an independent third-party trustee or
512 escrow agent. Immediately upon receipt by the independent third-
513 party trustee or escrow agent of documents from the viatical
514 settlement provider ~~viator~~ to effect the transfer of the
515 insurance policy, the viatical settlement provider must pay the
516 proceeds of the settlement to an escrow or trust account managed
517 by the independent third-party trustee or escrow agent in a
518 financial institution licensed under Florida law or a federally
519 chartered financial institution that is a member of the Federal
520 Reserve System, pending acknowledgment of the transfer by the
521 issuer of the policy. An advance or partial payment of the
522 proceeds due under a viatical settlement contract may not be
523 used to effect transfer of the subject policy; any such advance
524 or partial payment is made at the sole discretion and risk of
525 the viatical settlement provider.

526 Section 9. Section 626.99245, Florida Statutes, is amended
527 to read:

528 626.99245 Conflict of regulation of viaticals.--

529 (1) A viatical settlement provider who from this state
530 enters into a viatical settlement contract with a viator who is
531 a resident of another state that has enacted statutes or adopted

532 regulations governing viatical settlement contracts shall be
 533 governed in the effectuation of that viatical settlement
 534 contract by the statutes and regulations of the viator's state
 535 of residence. If the state in which the viator is a resident has
 536 not enacted statutes or regulations governing viatical
 537 settlement agreements, the provider shall give the viator notice
 538 that neither Florida nor his or her state regulates the
 539 transaction upon which he or she is entering. ~~For transactions~~
 540 ~~in those states, however, the viatical settlement provider is to~~
 541 ~~maintain all records required as if the transactions were~~
 542 ~~executed in Florida. The forms used in those states need not be~~
 543 ~~approved by the office.~~

544 (2) This section does not affect the requirement of s. ss.
 545 ~~626.9911(12)~~ and 626.9912(1) that a viatical settlement provider
 546 doing business from this state must obtain a viatical settlement
 547 license from the office. As used in this subsection, the term
 548 "doing business from this state" includes effectuating viatical
 549 settlement contracts from offices in this state, regardless of
 550 the state of residence of the viator.

551 Section 10. Section 626.9925, Florida Statutes, is amended
 552 to read:

553 626.9925 Rules.--The commission may adopt rules to
 554 administer this act, including rules establishing standards for
 555 evaluating advertising by licensees; rules providing for the
 556 collection of data, for disclosures to viators, for the
 557 reporting of life expectancies, and for the registration of life
 558 expectancy providers; and rules ~~defining terms used in this act~~
 559 ~~and~~ prescribing recordkeeping requirements relating to executed

560 viatical settlement contracts.

561 Section 11. Paragraph (e) is added to subsection (1) of
562 section 626.99275, Florida Statutes, to read:

563 626.99275 Prohibited practices; penalties.--

564 (1) It is unlawful for any person:

565 (e) To engage in stranger-originated life insurance.

566 Section 12. Section 626.99287, Florida Statutes, is
567 amended to read:

568 626.99287 Contestability of viaticated policies.--Except
569 as hereinafter provided, if a viatical settlement contract is
570 entered into at any time before the date of issuance of a policy
571 or within the 2-year period commencing with the date of issuance
572 of the insurance policy or certificate to be acquired, the
573 viatical settlement contract is void and unenforceable by either
574 party. Notwithstanding this limitation, such a viatical
575 settlement contract is not void and unenforceable if:

576 (1) The policy was issued upon the owner's exercise of
577 conversion rights arising out of a group or term policy;

578 (2) The owner of the policy is a charitable organization
579 exempt from taxation under 26 U.S.C. s. 501(c) (3);

580 (3) The owner of the policy is not a natural person;

581 (4) The viatical settlement contract was entered into
582 before July 1, 2000;

583 (5) The viator certifies by producing independent evidence
584 to the viatical settlement provider that one or more of the
585 following conditions have been met within the 2-year period:

586 (a)1. The viator or insured is diagnosed with an illness
587 or condition that is either:

- 588 a. Catastrophic or life threatening; or
 589 b. Requires a course of treatment for a period of at least
 590 3 years of long-term care or home health care; and
 591 2. The condition was not known to the insured at the time
 592 the life insurance contract was entered into.
 593 (b) The viator's spouse dies;
 594 (c) The viator divorces his or her spouse;
 595 (d) The viator retires from full-time employment;
 596 (e) The viator becomes physically or mentally disabled and
 597 a physician determines that the disability prevents the viator
 598 from maintaining full-time employment;
 599 (f) The owner of the policy was the insured's employer at
 600 the time the policy or certificate was issued and the employment
 601 relationship terminated;
 602 (g) A final order, judgment, or decree is entered by a
 603 court of competent jurisdiction, on the application of a
 604 creditor of the viator, adjudicating the viator bankrupt or
 605 insolvent, or approving a petition seeking reorganization of the
 606 viator or appointing a receiver, trustee, or liquidator to all
 607 or a substantial part of the viator's assets; or
 608 (h) The viator experiences a significant decrease in
 609 income which is unexpected by the viator and which impairs his
 610 or her reasonable ability to pay the policy premium.

611
 612 If the viatical settlement provider submits to the insurer a
 613 copy of the viator's or owner's certification described above,
 614 then the provider submits a request to the insurer to effect the
 615 transfer of the policy or certificate to the viatical settlement

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616 provider, the viatical settlement agreement shall not be void or
617 unenforceable by operation of this section. The insurer shall
618 timely respond to such request. Nothing in this section shall
619 prohibit an insurer from exercising its right during the
620 contestability period to contest the validity of any policy on
621 grounds of fraud.

622 Section 13. This act shall take effect July 1, 2009.