

By Senator Fasano

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1 A bill to be entitled
2 An act relating to viatical settlements; amending s.
3 626.9911, F.S.; defining the terms "business of
4 viatical settlements," "fraudulent viatical settlement
5 act," and "stranger-originated life insurance";
6 clarifying the definition of "viatical settlement
7 contract" by specifying items included and excluded by
8 the term; amending s. 626.9913, F.S.; requiring that a
9 viatical settlement provider's required annual
10 statement include certain information; removing an
11 obsolete provision relating to requirements for
12 viatical settlement providers; amending s. 626.9914,
13 F.S.; providing additional grounds pursuant to which
14 the Office of Insurance Regulation may suspend,
15 revoke, deny, or refuse to renew the license of a
16 viatical settlement provider; increasing the maximum
17 amount of administrative fines that may be assessed by
18 the office; amending s. 626.99175, F.S.; deleting
19 obsolete provisions; removing an incorrect cross-
20 reference; creating s. 626.99185, F.S.; requiring that
21 a viatical settlement provider provide to the viator a
22 disclosure statement before or concurrently with the
23 viator's execution of a viatical settlement contract;
24 requiring that such disclosure contain certain
25 information; requiring that the viator retain a
26 duplicate copy of such disclosure; requiring that the
27 viatical settlement provider provide an amended
28 disclosure under certain circumstances; requiring that
29 certain documentation be maintained by a viatical

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30 settlement provider in accordance with state law;
31 requiring that such documentation be available to the
32 office at any time for copying or inspection upon
33 reasonable notice; amending s. 626.9924, F.S.;
34 conforming a cross-reference to changes made by the
35 act; amending s. 626.99245, F.S., relating to
36 conflicts of regulation; correcting a cross-reference;
37 creating s. 626.99273, F.S.; prohibiting a viatical
38 settlement broker or viatical settlement provider from
39 knowingly carrying out certain actions; providing that
40 certain actions constitute fraudulent viatical
41 settlement acts; prohibiting a viatical settlement
42 provider from entering into a viatical settlement
43 contract unless promotional, marketing, and
44 advertising materials have been filed with the office;
45 prohibiting marketing materials, life insurance
46 producers, insurers, viatical settlement brokers, and
47 viatical settlement providers from making certain
48 representations regarding a policy; amending s.
49 626.99275, F.S.; providing that it is unlawful for any
50 person to engage in a fraudulent viatical settlement
51 act; providing that it is a violation of state law for
52 any person to enter into a viatical settlement
53 contract at any time before the application or
54 issuance of a policy that is the subject of a viatical
55 settlement contract or within a specified period after
56 the date of issuance of the insurance policy or
57 certificate; providing exceptions; providing that it
58 is a violation of state law for any person to issue,

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59 solicit, market, or otherwise promote the purchase of
60 a policy for the purpose of or with an emphasis on
61 selling the policy; creating s. 626.99276, F.S.;
62 requiring the submission of a copy of certain
63 documentation to the insurer when a party entering a
64 viatical settlement contract with a viator submits a
65 request to the insurer for verification of coverage;
66 requiring that a sworn affidavit attesting to certain
67 information accompany the submission of such
68 documentation; providing circumstances under which
69 such copy shall be considered conclusive evidence that
70 a viatical settlement contract satisfies the
71 requirements of state law; prohibiting an insurer from
72 imposing certain requirements as a condition of
73 responding to a request for verification of coverage
74 or transferring a policy; requiring that an insurer
75 confirm that a change to a policy has been made or
76 specify why a change could not be made within a
77 specified period after receipt of a request for change
78 of ownership or beneficiary of a policy; prohibiting
79 an insurer from unreasonable delaying effecting a
80 change of ownership or beneficiary or otherwise
81 interfering with a viatical settlement contract;
82 amending s. 626.99278, F.S.; requiring that every
83 licensed viatical settlement provider establish and
84 maintain certain documentation in accordance with
85 certain provisions of state law; repealing s.
86 626.99287, F.S., relating to contestability of
87 viaticated policies; creating s. 626.99289, F.S.;

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88 providing that certain contracts, agreements,
89 arrangements, or transactions are void and
90 unenforceable; providing an effective date.

91

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

93

94 Section 1. Section 626.9911, Florida Statutes, is amended
95 to read:

96 626.9911 Definitions.—As used in this act, the term:

97 (1) "Business of viatical settlements" means an activity
98 involved in, but not limited to, the offering, soliciting,
99 negotiating, procuring, effectuating, purchasing, investing,
100 monitoring, tracking, underwriting, selling, transferring,
101 assigning, pledging, hypothecating, or acquiring in any other
102 manner an interest in a life insurance policy by means of a
103 viatical settlement contract.

104 (2)~~(1)~~ "Financing entity" means an underwriter, placement
105 agent, lender, purchaser of securities, or purchaser of a policy
106 or certificate from a viatical settlement provider, credit
107 enhancer, or any entity that has direct ownership in a policy or
108 certificate that is the subject of a viatical settlement
109 contract, but whose principal activity related to the
110 transaction is providing funds or credit enhancement to effect
111 the viatical settlement or the purchase of one or more
112 viaticated policies and who has an agreement in writing with one
113 or more licensed viatical settlement providers to finance the
114 acquisition of viatical settlement contracts. The term does not
115 include a nonaccredited investor or other natural person. A
116 financing entity may not enter into a viatical settlement

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117 contract.

118 (3) "Fraudulent viatical settlement act" means acts or
119 omissions committed by any person who, knowingly or with intent
120 to defraud, for the purpose of depriving another of property, or
121 for pecuniary gain, commits or permits its employees or its
122 agents to engage in acts including:

123 (a) Presenting, causing to be presented, or preparing with
124 knowledge or belief that it will be presented to or by a
125 viatical settlement provider, viatical settlement broker,
126 financing entity, insurer, insurance producer, or any other
127 person, false material information, or concealing material
128 information as part of, in support of, or concerning a fact
129 material to one or more of the following:

130 1. An application for the issuance of a viatical settlement
131 contract or insurance policy;

132 2. The underwriting of a viatical settlement contract or
133 insurance policy;

134 3. A claim for payment or benefit pursuant to a viatical
135 settlement contract or insurance policy;

136 4. Premiums paid on an insurance policy;

137 5. Payments and changes in ownership or beneficiary made in
138 accordance with the terms of a viatical settlement contract or
139 insurance policy;

140 6. The reinstatement or conversion of an insurance policy;

141 7. The solicitation, offer, effectuation, or sale of a
142 viatical settlement contract or insurance policy;

143 8. The issuance of written evidence of a viatical
144 settlement contract or insurance; or

145 9. A financing transaction.

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146 (b) Employing any plan, financial structure, device,
147 scheme, or artifice to defraud related to viaticated policies.

148 (c) Entering into any practice or plan involving stranger-
149 originated life insurance.

150 (d) Failing to disclose to the insurer when requested by
151 the insurer that the prospective insured has undergone a life-
152 expectancy evaluation by any person or entity other than the
153 insurer or its authorized representatives in connection with the
154 issuance of the policy.

155 (e) Furtherance of a fraud or preventing the detection of a
156 fraud, including committing or permitting its employees or its
157 agents to:

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

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

163 3. Transact the business of viatical settlements in
164 violation of laws requiring a license, certificate of authority,
165 or other legal authority for the transaction of the business of
166 viatical settlements; or

167 4. File with the office or the equivalent chief insurance
168 regulatory official of another jurisdiction a document
169 containing false information or otherwise conceal information
170 about a material fact from the office or other regulatory
171 official.

172 (f) Embezzlement, theft, misappropriation, or conversion of
173 moneys, funds, premiums, credits, or other property of a
174 viatical settlement provider, insurer, insured, viator,

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175 insurance policyowner, or any other person engaged in the
176 business of viatical settlements or insurance.

177 (g) Recklessly entering into, negotiating, brokering, or
178 otherwise dealing in a viatical settlement contract, the subject
179 of which is a life insurance policy obtained by presenting false
180 information concerning any fact material to the policy or by
181 concealing, for the purpose of misleading another, information
182 concerning any fact material to the policy, if the person
183 intended to defraud the policy's issuer, the viatical settlement
184 provider, or the viator. "Recklessly" means engaging in the
185 conduct in conscious and clearly unjustifiable disregard of a
186 substantial likelihood of the existence of the relevant facts or
187 risks with a gross deviation from acceptable standards of
188 conduct.

189 (h) Knowingly or intentionally facilitating the change of
190 state of residency of a viator to avoid the provisions of this
191 act.

192 (i) Knowingly or intentionally, directly or indirectly,
193 facilitating or causing the creation of a trust that has a situs
194 in a jurisdiction other than Florida for the purpose of being a
195 policy owner of a life insurance policy covering a Florida
196 resident insured to avoid the provisions of this part.

197 (j) Knowingly or intentionally, directly or indirectly,
198 facilitating or causing the creation of, or facilitating or
199 causing the transfer of, the ownership of a policy covering a
200 Florida resident insured to a trust that has a situs in a
201 jurisdiction other than Florida or other nonresident person to
202 avoid the provisions of this part.

203 (k) Attempting to commit, assisting, aiding, or abetting in

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204 the commission of, or conspiring to commit, the acts or
205 omissions specified in this subsection.

206 (1) Making or facilitating any application for or payments
207 related to a loan secured directly or indirectly by any interest
208 in a life insurance policy.

209 (4)~~(2)~~ "Independent third-party trustee or escrow agent"
210 means an attorney, certified public accountant, financial
211 institution, or other person providing escrow services under the
212 authority of a regulatory body. The term does not include any
213 person associated, affiliated, or under common control with a
214 viatical settlement provider or viatical settlement broker.

215 (5)~~(3)~~ "Life expectancy" means an opinion or evaluation as
216 to how long a particular person is to live, or relating to such
217 person's expected demise.

218 (6)~~(4)~~ "Life expectancy provider" means a person who
219 determines, or holds himself or herself out as determining, life
220 expectancies or mortality ratings used to determine life
221 expectancies:

222 (a) On behalf of a viatical settlement provider, viatical
223 settlement broker, life agent, or person engaged in the business
224 of viatical settlements;

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

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

229 (7)~~(5)~~ "Person" has the meaning specified in s. 1.01.

230 (8)~~(6)~~ "Related form" means any form, created by or on
231 behalf of a licensee, which a viator or insured is required to
232 sign or initial. The forms include, but are not limited to, a

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233 power of attorney, a release of medical information form, a
234 suitability questionnaire, a disclosure document, or any
235 addendum, schedule, or amendment to a viatical settlement
236 contract considered necessary by a provider to effectuate a
237 viatical settlement transaction.

238 (9)~~(7)~~ "Related provider trust" means a titling trust or
239 other trust established by a licensed viatical settlement
240 provider or financing entity for the sole purpose of holding the
241 ownership or beneficial interest in purchased policies in
242 connection with a financing transaction. The trust must have a
243 written agreement with a licensed viatical settlement provider
244 or financing entity under which the licensed viatical settlement
245 provider or financing entity is responsible for insuring
246 compliance with all statutory and regulatory requirements and
247 under which the trust agrees to make all records and files
248 relating to viatical settlement transactions available to the
249 office as if those records and files were maintained directly by
250 the licensed viatical settlement provider. This term does not
251 include an independent third-party trustee or escrow agent or a
252 trust that does not enter into agreements with a viator. A
253 related provider trust shall be subject to all provisions of
254 this act that apply to the viatical settlement provider who
255 established the related provider trust, except s. 626.9912,
256 which shall not be applicable. A viatical settlement provider
257 may establish no more than one related provider trust, and the
258 sole trustee of such related provider trust shall be the
259 viatical settlement provider licensed under s. 626.9912. The
260 name of the licensed viatical settlement provider shall be
261 included within the name of the related provider trust.

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262 (10)~~(8)~~ "Special purpose entity" means an entity
263 established by a licensed viatical settlement provider or by a
264 financing entity, which may be a corporation, partnership,
265 trust, limited liability company, or other similar entity formed
266 solely to provide, either directly or indirectly, access to
267 institutional capital markets to a viatical settlement provider
268 or financing entity. A special purpose entity may not obtain
269 capital from any natural person or entity with less than \$50
270 million in assets and may not enter into a viatical settlement
271 contract.

272 (11) "Stranger-originated life insurance" or "STOLI" means
273 a practice or plan to initiate a life insurance policy for the
274 benefit of a third-party investor who, at the time of policy
275 origination, has no insurable interest in the insured. STOLI
276 practices include, but are not limited to, cases in which life
277 insurance is purchased with resources or guarantees from or
278 through a person or entity who, at the time of the policy's
279 inception, could not lawfully initiate the policy himself,
280 herself, or itself, and where, at the time of inception, there
281 is a verbal or written arrangement, express or implied, or an
282 agreement to directly or indirectly transfer the ownership or
283 benefits of the policy to a third party. Trusts created to give
284 the appearance of insurable interest and used to initiate
285 policies for investors violate insurable interest laws and the
286 prohibition against wagering on life.

287 (12)~~(9)~~ "Viatical settlement broker" means a person who, on
288 behalf of a viator and for a fee, commission, or other valuable
289 consideration, offers or attempts to negotiate viatical
290 settlement contracts between a viator resident in this state and

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291 one or more viatical settlement providers. Notwithstanding the
292 manner in which the viatical settlement broker is compensated, a
293 viatical settlement broker is deemed to represent only the
294 viator and owes a fiduciary duty to the viator to act according
295 to the viator's instructions and in the best interest of the
296 viator. The term does not include an attorney, licensed
297 Certified Public Accountant, or investment adviser lawfully
298 registered under chapter 517, who is retained to represent the
299 viator and whose compensation is paid directly by or at the
300 direction and on behalf of the viator.

301 ~~(13)(10)~~ "Viatical settlement contract" means a written
302 agreement entered into between a viatical settlement provider,
303 or its related provider trust, and a viator. The viatical
304 settlement contract includes an agreement to transfer ownership
305 or change the beneficiary designation of a life insurance policy
306 at a later date, regardless of the date that compensation is
307 paid to the viator. The agreement must establish the terms under
308 which the viatical settlement provider will pay compensation or
309 anything of value, which compensation or value is less than the
310 expected death benefit of the insurance policy or certificate,
311 in return for the viator's assignment, transfer, sale, devise,
312 or bequest of the death benefit or ownership of all or a portion
313 of the insurance policy or certificate of insurance to the
314 viatical settlement provider. A viatical settlement contract
315 also includes the transfer for compensation or value of
316 ownership or beneficial interest in a trust or other entity that
317 owns such policy if the trust or other entity was formed or
318 availed of for the principal purpose of acquiring one or more
319 life insurance contracts insuring the life of a person residing

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320 in this state. A viatical settlement contract also includes a
321 contract for a loan or other financial transaction secured
322 primarily by an individual or group life insurance policy. A
323 viatical settlement contract does not include, ~~other than a~~
324 policy loan by a life insurance company pursuant to the terms of
325 the life insurance contract or accelerated death provisions
326 contained in a life insurance policy, whether issued with the
327 original policy or as a rider, or a loan secured by the cash
328 surrender value of a policy as determined by the policy issuer
329 and the life insurance policy terms, or any loan or advance from
330 the issuer of the policy to the policy owner.

331 (14)~~(11)~~ "Viatical settlement investment" has the same
332 meaning as specified in s. 517.021.

333 (15)~~(12)~~ "Viatical settlement provider" means a person who,
334 in this state, from this state, or with a resident of this
335 state, effectuates a viatical settlement contract. The term does
336 not include:

337 (a) Any bank, savings bank, savings and loan association,
338 or credit union, ~~or other licensed lending institution~~ that
339 takes an assignment of a life insurance policy as collateral for
340 a loan.

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

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

348 (d) A trust that meets the definition of a "related

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349 provider trust."

350 (e) A viator in this state.

351 (f) A financing entity.

352 ~~(16)-(13)~~ "Viaticated policy" means a life insurance policy,
353 or a certificate under a group policy, which is the subject of a
354 viatical settlement contract.

355 ~~(17)-(14)~~ "Viator" means the owner of a life insurance
356 policy or a certificateholder under a group policy, which policy
357 is not a previously viaticated policy, who enters or seeks to
358 enter into a viatical settlement contract. This term does not
359 include a viatical settlement provider or any person acquiring a
360 policy or interest in a policy from a viatical settlement
361 provider, nor does it include an independent third-party trustee
362 or escrow agent.

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

365 626.9913 Viatical settlement provider license continuance;
366 annual report; fees; deposit.—

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

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

373 1. For Florida-regulated transactions, the total number of
374 unsettled viatical settlement contracts and corresponding total
375 amount due viators on viatical settlement contracts that have
376 been signed by the viator but not settled as of December 31 of
377 the preceding calendar year categorized by the number of days

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378 since the viator signed the contract.

379 2. The total number of policies purchased in any state,
380 territory, or jurisdiction; the total gross amount paid for
381 policies purchased in any state, territory, or jurisdiction; and
382 the total face value of policies purchased for the preceding
383 calendar year and most recent 5 years in any state, territory,
384 or jurisdiction.

385 3. The total number of policies purchased, the total gross
386 amount paid for such policies, the total commissions or
387 compensation paid for such policies, and the total face value of
388 such policies, allocated by state, territory, or jurisdiction;
389 and

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

392 (c) After December 31, 2007, The annual statement shall
393 include an annual audited financial statement of the viatical
394 settlement provider prepared in accordance with generally
395 accepted accounting principles by an independent certified
396 public accountant covering a 12-month period ending on a day
397 falling during the last 6 months of the preceding calendar year.
398 If the audited financial statement has not been completed,
399 however, the licensee shall include in its annual statement an
400 unaudited financial statement for the preceding calendar year
401 and an affidavit from an officer of the licensee stating that
402 the audit has not been completed. In this event, the licensee
403 shall submit the audited statement on or before June 1. The
404 annual statement, due on or before March 1 each year, shall also
405 provide the office with a report of all life expectancy
406 providers who have provided life expectancies directly or

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407 indirectly to the viatical settlement provider for use in
408 connection with a viatical settlement contract or a viatical
409 settlement investment. A viatical settlement provider shall
410 include in all statements filed with the office all information
411 requested by the office regarding a related provider trust
412 established by the viatical settlement provider. The office may
413 require more frequent reporting. Failure to timely file the
414 annual statement or the audited financial statement or to timely
415 pay the license fee is grounds for immediate suspension of the
416 license. The commission may by rule require all or part of the
417 statements or filings required under this section to be
418 submitted by electronic means in a computer-readable form
419 compatible with the electronic data format specified by the
420 commission.

421 (3) To ensure the faithful performance of its obligations
422 to its viators in the event of insolvency or the loss of its
423 license, a viatical settlement provider licensee must deposit
424 and maintain deposited in trust with the department securities
425 eligible for deposit under s. 625.52, having at all times a
426 value of not less than \$100,000; ~~however, a viatical settlement~~
427 ~~provider licensed in this state prior to June 1, 2004, which has~~
428 ~~deposited and maintains continuously deposited in trust with the~~
429 ~~department securities in the amount of \$25,000 and which posted~~
430 ~~and maintains continuously posted a security bond acceptable to~~
431 ~~the department in the amount of \$75,000, has until June 1, 2005,~~
432 ~~to comply with the requirements of this subsection.~~

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

435 626.9914 Suspension, revocation, denial, or nonrenewal of

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436 viatical settlement provider license; grounds; administrative
437 fine.—

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

441 (a) Has made a misrepresentation in the application for the
442 license;

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

446 (c) Demonstrates a pattern of unreasonable payments to
447 viators;

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

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

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

456 (g) Deals in bad faith with viators;

457 (h) Has violated any provision of the insurance code or of
458 this act;

459 (i) Employs any person who materially influences the
460 licensee's conduct and who fails to meet the requirements of
461 this act;

462 (j) No longer meets the requirements for initial licensure;

463 ~~or~~

464 (k) Obtains or utilizes life expectancies from life

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465 expectancy providers who are not registered with the office
466 pursuant to this act; or.

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

468 (2) The office may, in lieu of or in addition to any
469 suspension or revocation, assess an administrative fine not to
470 exceed \$10,000 ~~\$2,500~~ for each nonwillful violation or \$25,000
471 ~~\$10,000~~ for each willful violation by a viatical settlement
472 provider licensee. The office may also place a viatical
473 settlement provider licensee on probation for a period not to
474 exceed 2 years.

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

477 626.99175 Life expectancy providers; registration required;
478 denial, suspension, revocation.-

479 (1) ~~After July 1, 2006,~~ A person may not perform the
480 functions of a life expectancy provider without first having
481 registered as a life expectancy provider, ~~except as provided in~~
482 ~~subsection (6).~~

483 Section 5. Section 626.99185, Florida Statutes, is created
484 to read:

485 626.99185 Disclosures of disbursement to viator.-

486 (1) Before or concurrently with a viator's execution of a
487 viatical settlement contract, the viatical settlement provider
488 shall sign, date, and provide to the viator, in duplicate, a
489 disclosure statement in legible written form disclosing:

490 (a) The name of each viatical settlement broker who
491 receives or is to receive compensation and the amount of each
492 broker's compensation related to that transaction. For the
493 purpose of this subsection, "compensation" includes anything of

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494 value paid or given by or at the direction of a viatical
495 settlement provider or person acquiring an interest in one or
496 more life insurance policies to a viatical settlement broker in
497 connection with the viatical settlement contract; and

498 (b) A complete reconciliation of the gross offer or bid by
499 the viatical settlement provider to the net amount of proceeds
500 or value to be received by the viator related to that
501 transaction. For purposes of this subsection, the term "gross
502 offer" or "bid" means the total amount or value offered by the
503 viatical settlement provider for the purchase of an interest in
504 one or more life insurance policies, inclusive of commissions,
505 compensation, or other proceeds or value being deducted from the
506 gross offer or bid.

507 (2) The disclosure statement shall be signed and dated by
508 the viator before or concurrently with the viator's execution of
509 a viatical settlement contract. A duplicate copy of the
510 disclosure statement shall be retained by the viator.

511 (3) If a viatical settlement contract has been entered into
512 and the contract is subsequently amended, if there is any change
513 in the viatical settlement provider's gross offer or bid amount
514 or change in the net amount of proceeds or value to be received
515 by the viator, or if there is any change in the information
516 provided in the disclosure statement to the viator, the viatical
517 settlement provider shall provide, in duplicate, an amended
518 disclosure statement to the viator containing the information
519 described in subsection (1). The amended disclosure statement
520 shall be signed and dated by the viator and the duplicate copy
521 of the amended disclosure statement shall be retained by the
522 viator.

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523 (4) The documentation required by this section shall be
524 maintained by the viatical settlement provider pursuant to s.
525 626.9922(2) and shall be available to the office at any time for
526 copying and inspection upon reasonable notice to the viatical
527 settlement provider.

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

530 626.9924 Viatical settlement contracts; procedures;
531 rescission.—

532 (7) At any time during the contestable period, within 20
533 days after a viator executes documents necessary to transfer
534 rights under an insurance policy or within 20 days of any
535 agreement, option, promise, or any other form of understanding,
536 express or implied, to viaticate the policy, the provider must
537 give notice to the insurer of the policy that the policy has or
538 will become a viaticated policy. The notice must be accompanied
539 by the documents required by s. 626.99275(3)(b) ~~s.~~
540 ~~626.99287(5)(a)~~ in their entirety.

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

543 626.99245 Conflict of regulation of viaticals.—

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 8. Section 626.99273, Florida Statutes, is created

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552 to read:

553 626.99273 Prohibited practices and conflicts of interest.-

554 (1) With respect to any viatical settlement contract or
555 insurance policy, a viatical settlement broker may not knowingly
556 solicit an offer from, carry out a viatical settlement with, or
557 make a sale to any viatical settlement provider, financing
558 entity, or related provider trust that is controlling,
559 controlled by, or under common control with such viatical
560 settlement broker.

561 (2) With respect to any viatical settlement contract or
562 insurance policy, a viatical settlement provider may not
563 knowingly enter into a viatical settlement contract with a
564 viator if, in connection with such viatical settlement contract,
565 anything of value will be paid to a viatical settlement broker
566 that is controlling, controlled by, or under common control with
567 such viatical settlement provider, financing entity, or related
568 provider trust involved in such viatical settlement contract.

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

571 (4) A viatical settlement provider may not enter into a
572 viatical settlement contract unless the viatical settlement
573 promotional, advertising, and marketing materials, as may be
574 prescribed by rule, have been filed with the office. Marketing
575 materials may not expressly reference that the insurance is
576 "free" for any period of time. The inclusion of any reference in
577 the marketing materials which would cause a viator to reasonably
578 believe that the insurance is free for any period of time is a
579 violation of this act.

580 (5) A life insurance producer, insurer, viatical settlement

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581 broker, or viatical settlement provider may not make any
582 statement or representation to the applicant or policyholder in
583 connection with the sale of a life insurance policy to the
584 effect that the insurance is free or without cost to the
585 policyholder for any period of time.

586 Section 9. Paragraph (e) is added to subsection (1) of
587 section 626.99275, Florida Statutes, and subsections (3) and (4)
588 are added to that section, to read:

589 626.99275 Prohibited practices; penalties.—

590 (1) It is unlawful for any person:

591 (e) To engage in a fraudulent viatical settlement act.

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

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

609 (b) Independent evidence of one or more of the following:

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- 610 1. The viator or insured is terminally or chronically ill;
611 2. The viator's spouse dies;
612 3. The viator divorces his or her spouse;
613 4. The viator retires from full-time employment;
614 5. The viator becomes physically or mentally disabled and a
615 physician determines that the disability prevents the viator
616 from maintaining full-time employment; or
617 6. A final order, judgment, or decree is entered by a court
618 of competent jurisdiction on the application of a creditor of
619 the viator adjudicating the viator bankrupt or insolvent, or
620 approving a petition seeking reorganization of the viator or
621 appointing a receiver, trustee, or liquidator to all or a
622 substantial part of the viator's assets.
- 623 (c) The viator enters into a viatical settlement contract
624 more than 2 years after the date of issuance of a policy and,
625 with respect to the policy, at all times before the date that is
626 2 years after issuance of the policy, the following conditions
627 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 fully recourse-liability
632 incurred 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 stand
635 ready to purchase the policy, including through an assumption or
636 forgiveness of the loan; and
- 637 3. Neither the insured nor the policy has been evaluated
638 for settlement.

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639 (4) It is a violation of this act for any person to issue,
640 solicit, market, or otherwise promote the purchase of a policy
641 for the purpose of or with an emphasis on selling the policy.

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

644 626.99276 Notification to insurer required.-

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

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

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

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

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

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

682 626.99278 Viatical provider anti-fraud plan.—

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

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

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

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

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

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

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

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

712 (b) All documentation pertaining to resolved and unresolved
713 material inconsistencies between medical records and insurance
714 applications; and

715 (c) Documentation pertaining to the mandatory reporting of
716 possible fraudulent acts and prohibited practices set forth in s
717 626.99275, a copy of which shall be submitted to the Division of
718 Insurance Fraud of the department.

719 Section 12. Section 626.99287, Florida Statutes, is
720 repealed.

721 Section 13. Section 626.99289, Florida Statutes, is created
722 to read:

723 626.99289 Void and unenforceable contracts, agreements,
724 arrangements, and transactions.—Any contract, agreement,
725 arrangement, or transaction, including, but not limited to, any

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726 financing agreement, any written or verbal arrangement or
727 understanding, express or implied, entered into for the
728 furtherance or aid of a stranger-originated life insurance act,
729 practice, arrangement, or agreement is void and unenforceable.

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