

By Senator Gaetz

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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  
10          transactions and specify transactions not constituting  
11          such a contract; conforming other definitions to  
12          changes made by the act; amending s. 626.9913, F.S.;  
13          requiring that a viatical settlement provider annually  
14          file a statement containing information required by  
15          state law on or before a specified date; providing  
16          requirements for such statements; authorizing the  
17          Office of Insurance Regulation to adopt rules;  
18          amending s. 626.9914, F.S.; clarifying grounds for  
19          which the office may suspend, revoke, deny, or refuse  
20          to renew the license of a viatical settlement  
21          provider; amending s. 626.99175, F.S.; prohibiting a  
22          person from performing the functions of a life  
23          expectancy provider regarding viatical settlement  
24          contracts without first having registered as a life  
25          expectancy provider; amending s. 626.992, F.S.;  
26          clarifying restrictions on the use of viatical  
27          settlement brokers, viatical settlement providers, and  
28          registered life expectancy providers; clarifying a  
29          requirement that a person operating as a life

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30           expectancy provider register as such; amending s.  
31           626.9922, F.S.; limiting the scope of an examination  
32           of the business affairs of certain licensees by the  
33           office or Department of Financial Services; clarifying  
34           provisions relating to parties to whom such  
35           examination requirements apply; creating s. 626.99234,  
36           F.S.; authorizing insurers to make certain inquiries  
37           to an applicant for a life insurance policy;  
38           authorizing an insurer to reject certain applications;  
39           prohibiting an insurer from rejecting an application  
40           solely because the premiums will be financed under  
41           certain circumstances; authorizing an insurer to make  
42           certain disclosures to an applicant; authorizing an  
43           insurer to require certain certifications from an  
44           applicant or insured; amending s. 626.9924, F.S.;  
45           requiring that a viatical settlement provider obtain a  
46           witnessed document containing certain provisions  
47           before the execution of a viatical settlement  
48           contract; providing for the use of a third-party  
49           trustee or escrow agent during a viatical settlement  
50           transaction; amending s. 626.99245, F.S.; deleting  
51           provisions requiring the maintenance of certain  
52           records from viatical settlement transactions  
53           completed in other states; amending s. 626.9925, F.S.;  
54           deleting a provision authorizing the Financial  
55           Services Commission to adopt rules defining terms for  
56           use in the Viatical Settlement Act; amending s.  
57           626.99275, F.S.; prohibiting any person from engaging  
58           in stranger-originated life insurance; providing

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59 penalties; amending s. 626.99287, F.S.; providing that  
60 a viatical settlement contract is void under certain  
61 circumstances; providing an effective date.

62  
63 Be It Enacted by the Legislature of the State of Florida:

64  
65 Section 1. Section 626.9911, Florida Statutes, is amended  
66 to read:

67 626.9911 Definitions.—As used in this act, the term:

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

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

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

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

97 (a) On behalf of a viatical settlement provider, viatical  
98 settlement broker, life agent, or person engaged in the business  
99 of viatical settlements;

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

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

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

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

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

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

141        (9)~~(8)~~ "Special purpose entity" means an entity established  
142 by a licensed viatical settlement provider or by a financing  
143 entity, which may be a corporation, partnership, trust, limited  
144 liability company, or other similar entity formed solely to  
145 provide, either directly or indirectly, access to institutional

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146 capital markets to a viatical settlement provider or financing  
147 entity. A special purpose entity may not obtain capital from any  
148 natural person or entity with less than \$50 million in assets  
149 and may not enter into a viatical settlement contract.

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

169 (11)-(9) "Viatical settlement broker" means a person who, on  
170 behalf of a viator and for a fee, commission, or other valuable  
171 consideration, offers or attempts to negotiate viatical  
172 settlement contracts between a viator resident in this state and  
173 one or more viatical settlement providers. Notwithstanding the  
174 manner in which the viatical settlement broker is compensated, a

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175 viatical settlement broker is deemed to represent only the  
176 viator and owes a fiduciary duty to the viator to act according  
177 to the viator's instructions and in the best interest of the  
178 viator. The term does not include an attorney, licensed  
179 Certified Public Accountant, or investment adviser lawfully  
180 registered under chapter 517, who is retained to represent the  
181 viator and whose compensation is paid directly by or at the  
182 direction and on behalf of the viator.

183 (12)~~(10)~~ "Viatical settlement contract" means:

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

198 (b) A viatical settlement contract also includes:

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

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

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

210           b. The owner receives on the date of the origination of the  
211 premium-finance loan a guarantee of the future viatical  
212 settlement value of the policy.

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

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

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

225           2. A premium finance loan or any loan made by a bank or  
226 other licensed financial institution, if neither party defaults  
227 on such loan or the transfer of the policy in connection with  
228 such default is pursuant to an agreement or understanding with  
229 any other person for the purpose of evading regulation under  
230 this act.

231           3. A collateral assignment of a life insurance policy by an  
232 owner of a policy.



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

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

238       a. The parties are closely related to the insured by blood  
239 or law.

240       b. The parties have a lawful substantial economic interest  
241 in the continued life, health, and bodily safety of the person  
242 insured.

243       c. The parties are trusts established primarily for the  
244 benefit of those parties.

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

249       7. A bona fide business succession planning arrangement  
250 between:

251       a. One or more shareholders in a corporation;

252       b. A corporation and one or more of its shareholders or one  
253 or more trusts established by its shareholders;

254       c. One or more partners in a partnership;

255       d. A partnership and one or more of its partners or one or  
256 more trusts established by its partners;

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

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

260       8. An agreement entered into by a service recipient or a  
261 trust established by the service recipient, or a service

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262 provider or a trust established by the service provider  
263 performing significant services for the service recipient's  
264 trade or business.

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

272 (13) ~~(11)~~ "Viatical settlement investment" has the same  
273 meaning as specified in s. 517.021.

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

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

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

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

289 (d) A trust that meets the definition of a "related  
290 provider trust."

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291 (e) A viator in this state.

292 (f) A financing entity.

293 (15)~~(13)~~ "Viaticated policy" means a life insurance policy,  
294 or a certificate under a group policy, which is the subject of a  
295 viatical settlement contract.

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

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

306 626.9913 Viatical settlement provider license continuance;  
307 annual report; fees; deposit.—

308 (2) Annually, on or before March 1, the viatical settlement  
309 provider licensee shall file a statement containing information  
310 required by statute ~~the commission requires~~ and shall pay to the  
311 office a license fee in the amount of \$500. After December 31,  
312 2007, the annual statement shall include an annual audited  
313 financial statement of the viatical settlement provider prepared  
314 in accordance with generally accepted accounting principles by  
315 an independent certified public accountant covering a 12-month  
316 period ending on a day falling during the last 6 months of the  
317 preceding calendar year. If the audited financial statement has  
318 not been completed, however, the licensee shall include in its  
319 annual statement an unaudited financial statement for the

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320 preceding calendar year and an affidavit from an officer of the  
321 licensee stating that the audit has not been completed. In this  
322 event, the licensee shall submit the audited statement on or  
323 before June 1. The audited and unaudited financial statements  
324 are subject to the provisions of chapter 688 and ss. 812.081 and  
325 815.045 and may be protected as trade secrets. The annual  
326 statement, due on or before March 1 each year, shall also  
327 provide the office with a report of all life expectancy  
328 providers who have provided life expectancies ~~directly or~~  
329 ~~indirectly~~ to the viatical settlement provider for use in  
330 connection with a viatical settlement contract ~~or a viatical~~  
331 ~~settlement investment~~. A viatical settlement provider shall  
332 include in all statements filed with the office all information  
333 requested by the office regarding a related provider trust  
334 established by the viatical settlement provider. The office may  
335 adopt rules requiring that the annual statement contain  
336 information, in the aggregate, regarding viatical settlement  
337 contracts entered into with a resident of this state. ~~The office~~  
338 ~~may require more frequent reporting.~~ Failure to timely file the  
339 annual statement or the audited financial statement or to timely  
340 pay the license fee is grounds for immediate suspension of the  
341 license. The commission may by rule require all or part of the  
342 statements or filings required under this section to be  
343 submitted by electronic means in a computer-readable form  
344 compatible with the electronic data format specified by the  
345 commission.

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

348 626.9914 Suspension, revocation, denial, or nonrenewal of

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349 viatical settlement provider license; grounds; administrative  
350 fine.—

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

354 (a) Has made a misrepresentation in the application for the  
355 license;

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

359 (c) Demonstrates a pattern of unreasonable payments to  
360 viators;

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

365 (e) Has issued viatical settlement contracts using a  
366 viatical settlement contract form that has ~~have~~ not been  
367 approved pursuant to this act;

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

370 (g) Deals in bad faith with viators;

371 (h) Has violated any provision of the insurance code or of  
372 this act;

373 (i) Employs any person who materially influences the  
374 licensee's conduct and who fails to meet the requirements of  
375 this act;

376 (j) No longer meets the requirements for initial licensure;  
377 or

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

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

383 626.99175 Life expectancy providers; registration required;  
384 denial, suspension, revocation.—

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

389 Section 5. Section 626.992, Florida Statutes, is amended to  
390 read:

391 626.992 Use of licensed viatical settlement providers,  
392 viatical settlement brokers, and registered life expectancy  
393 providers required.—

394 (1) A licensed viatical settlement provider may not use any  
395 person to perform the functions of a viatical settlement broker  
396 as defined in this act regarding a viatical settlement contract  
397 unless such person holds a current, valid life agent license and  
398 has appointed himself or herself in conformance with this  
399 chapter.

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

405 (3) ~~After July 1, 2006,~~ A person may not operate as a life  
406 expectancy provider regarding a viatical settlement contract

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407 unless such person is registered as a life expectancy provider  
408 pursuant to this act.

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

415 Section 6. Subsections (1), (2), (4), and (7) of section  
416 626.9922, Florida Statutes, are amended to read:

417 626.9922 Examination.—

418 (1) The office or department may examine the business and  
419 affairs of any of its respective licensees or applicants for a  
420 license. The office or department may order any such licensee or  
421 applicant to produce any records, books, files, advertising and  
422 solicitation materials, or other information and may take  
423 statements under oath to determine whether the licensee or  
424 applicant is in violation of the law or is acting contrary to  
425 the public interest. With respect to licensees, the examination  
426 is limited to information regarding viatical settlement  
427 contracts executed in this state, from this state, or with a  
428 resident of this state. The expenses incurred in conducting any  
429 examination or investigation must be paid by the licensee or  
430 applicant. Examinations and investigations must be conducted as  
431 provided in chapter 624, and licensees are subject to all  
432 applicable provisions of the insurance code.

433 (2) All accounts, books and records, documents, files,  
434 contracts, and other information relating to all transactions of  
435 viatical settlement contracts, or life expectancies regarding

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436 viatical settlement contracts, ~~or viatical settlement purchase~~  
437 ~~agreements made before July 1, 2005~~, must be maintained by the  
438 licensee for a period of at least 3 years after the death of the  
439 insured and must be available to the office or department for  
440 inspection during reasonable business hours.

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

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

451 Section 7. Section 626.99234, Florida Statutes, is created  
452 to read:

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

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



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

469 (3) The insurance carrier may make a disclosure to the  
470 applicant, either on the application or an amendment to the  
471 application to be completed no later than the date of delivery  
472 of the policy, including, but not limited to, the following:  
473 IF YOU HAVE ENTERED INTO A LOAN ARRANGEMENT IN WHICH THE POLICY  
474 IS USED AS COLLATERAL AND THE POLICY CHANGES OWNERSHIP AT SOME  
475 POINT IN THE FUTURE IN SATISFACTION OF THE LOAN, YOU SHOULD BE  
476 AWARE THAT A CHANGE OF OWNERSHIP COULD LEAD TO A STRANGER OWNING  
477 AN INTEREST IN THE INSURED'S LIFE AND COULD IN THE FUTURE LIMIT  
478 YOUR ABILITY TO PURCHASE INSURANCE ON THE INSURED'S LIFE BECAUSE  
479 THERE IS A LIMIT AS TO HOW MUCH COVERAGE INSURERS WILL ISSUE ON  
480 A LIFE. YOU SHOULD CONSULT A PROFESSIONAL ADVISOR SINCE A CHANGE  
481 IN OWNERSHIP IN SATISFACTION OF THE LOAN MAY RESULT IN TAX  
482 CONSEQUENCES TO THE OWNER, DEPENDING ON THE STRUCTURE OF THE  
483 LOAN.

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

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

490 (b) MY LOAN ARRANGEMENT FOR THIS POLICY PROVIDES FUNDS  
491 SUFFICIENT TO PAY FOR SOME OR ALL OF THE PREMIUMS, COSTS, AND  
492 EXPENSES ASSOCIATED WITH OBTAINING AND MAINTAINING MY LIFE  
493 INSURANCE POLICY, BUT I HAVE NOT ENTERED INTO ANY AGREEMENT

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494 PURSUANT TO WHICH I AM TO RECEIVE CONSIDERATION IN EXCHANGE FOR  
495 PROCURING THIS POLICY.

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

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

499 626.9924 Viatical settlement contracts; procedures;  
500 rescission.—

501 (1) Before the execution of a viatical settlement contract  
502 by all parties, the A viatical settlement provider entering into  
503 a viatical settlement contract with any viator must first obtain  
504 a witnessed document in which the viator consents to the  
505 viatical settlement contract, represents that he or she has a  
506 full and complete understanding of the viatical settlement  
507 contract and the benefits of the life insurance policy, releases  
508 his or her medical records, and acknowledges that he or she is  
509 entering ~~has entered~~ into the viatical settlement contract  
510 freely and voluntarily.

511 (3) A viatical settlement transaction may be completed only  
512 through the use of an independent third-party trustee or escrow  
513 agent. Immediately upon receipt by the independent third-party  
514 trustee or escrow agent of documents from the viatical  
515 settlement provider ~~viator~~ to effect the transfer of the  
516 insurance policy, the viatical settlement provider must pay the  
517 proceeds of the settlement to an escrow or trust account managed  
518 by the independent third-party trustee or escrow agent in a  
519 financial institution licensed under Florida law or a federally  
520 chartered financial institution that is a member of the Federal  
521 Reserve System, pending acknowledgment of the transfer by the  
522 issuer of the policy. An advance or partial payment of the

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523 proceeds due under a viatical settlement contract may not be  
524 used to effect transfer of the subject policy; any such advance  
525 or partial payment is made at the sole discretion and risk of  
526 the viatical settlement provider.

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

529 626.99245 Conflict of regulation of viaticals.—

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

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

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

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

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

564 626.99275 Prohibited practices; penalties.—

565 (1) It is unlawful for any person:

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

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

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

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

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

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- 581 (3) The owner of the policy is not a natural person;
- 582 (4) The viatical settlement contract was entered into  
583 before July 1, 2000;
- 584 (5) The viator certifies by producing independent evidence  
585 to the viatical settlement provider that one or more of the  
586 following conditions have been met within the 2-year period:
- 587 (a)1. The viator or insured is diagnosed with an illness or  
588 condition that is either:
- 589 a. Catastrophic or life threatening; or
- 590 b. Requires a course of treatment for a period of at least  
591 3 years of long-term care or home health care; and
- 592 2. The condition was not known to the insured at the time  
593 the life insurance contract was entered into.
- 594 (b) The viator's spouse dies;
- 595 (c) The viator divorces his or her spouse;
- 596 (d) The viator retires from full-time employment;
- 597 (e) The viator becomes physically or mentally disabled and  
598 a physician determines that the disability prevents the viator  
599 from maintaining full-time employment;
- 600 (f) The owner of the policy was the insured's employer at  
601 the time the policy or certificate was issued and the employment  
602 relationship terminated;
- 603 (g) A final order, judgment, or decree is entered by a  
604 court of competent jurisdiction, on the application of a  
605 creditor of the viator, adjudicating the viator bankrupt or  
606 insolvent, or approving a petition seeking reorganization of the  
607 viator or appointing a receiver, trustee, or liquidator to all  
608 or a substantial part of the viator's assets; or
- 609 (h) The viator experiences a significant decrease in income

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610 which is unexpected by the viator and which impairs his or her  
611 reasonable ability to pay the policy premium.

612

613 If the viatical settlement provider submits to the insurer a  
614 copy of the viator's or owner's certification described above,  
615 then the provider submits a request to the insurer to effect the  
616 transfer of the policy or certificate to the viatical settlement  
617 provider, the viatical settlement agreement shall not be void or  
618 unenforceable by operation of this section. The insurer shall  
619 timely respond to such request. Nothing in this section shall  
620 prohibit an insurer from exercising its right during the  
621 contestability period to contest the validity of any policy on  
622 grounds of fraud.

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