

Amendment No.

CHAMBER ACTION

Senate

House

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1 Representative Gaetz offered the following:

2  
3 **Amendment (with title amendment)**

4 Between lines 237 and 238, insert:

5 Section 6. Section 626.995, Florida Statutes, is created  
6 to read:

7 626.995 Scope.—With the exception of s. 626.99245, chapter  
8 626 and the Florida Insurance Code do not authorize the office  
9 to conduct any inspection or review or exercise any other  
10 regulatory authority relating to a viatical settlement contract  
11 entered into with a resident of another state.

12 Section 7. Subsections (1), (2), (3), (4), (6), (7), (8),  
13 (9), (10), and (14) of section 626.9911, Florida Statutes, are  
14 amended to read:

15 626.9911 Definitions.—As used in this act, the term:

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16 (1) "Financing entity" means an underwriter, placement  
17 agent, lender, purchaser of securities, or purchaser of a policy  
18 or certificate from a viatical settlement provider, credit  
19 enhancer, or any entity that has direct ownership in a policy or  
20 certificate that is the subject of a viatical settlement  
21 contract, but whose principal activity related to the  
22 transaction is providing funds or credit enhancement to effect  
23 the viatical settlement contract or the purchase of one or more  
24 viaticated policies and who has an agreement in writing with one  
25 or more licensed viatical settlement providers to finance the  
26 acquisition of viatical settlement contracts. The term does not  
27 include a nonaccredited investor or other natural person. A  
28 financing entity may not enter into a viatical settlement  
29 contract.

30 (2) "Independent third-party trustee or escrow agent"  
31 means an attorney, certified public accountant, financial  
32 institution, or other person providing escrow services relating  
33 to a viatical settlement contract under the authority of a  
34 regulatory body. The term does not include any person  
35 associated, affiliated, or under common control with a viatical  
36 settlement provider or viatical settlement broker.

37 (3) "Life expectancy" means an opinion or evaluation  
38 relating to a viatical settlement contract as to how long a  
39 particular person is to live, or relating to such person's  
40 expected demise.

41 (4) (a) "Life expectancy provider" means a person who  
42 determines, or holds himself or herself out as determining, life  
43 expectancies or mortality ratings used to determine life

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44 expectancies relating to a viatical settlement contract or  
45 viatical settlement investment:

46 1.(a) On behalf of a viatical settlement provider,  
47 viatical settlement broker, life agent, or person engaged in the  
48 business of viatical settlements performing the functions of a  
49 viatical settlement provider; or

50 2.(b) In connection with a viatical settlement investment,  
51 pursuant to s. 517.021(23).; or

52 (b)(e) The term "life expectancy provider" does not  
53 include a viatical settlement provider, financing entity,  
54 related provider trust, or special purpose entity, or an  
55 employee or agent thereof, that determines life expectancies for  
56 its own use On residents of this state in connection with a  
57 viatical settlement contract or viatical settlement investment.

58 (6) "Related form" means any form, created by or on behalf  
59 of a viatical settlement provider licensee, which a viator is  
60 required to sign or initial. The forms include, but are not  
61 limited to, a power of attorney, a release of medical  
62 information form, a suitability questionnaire, a disclosure  
63 document, or any addendum, schedule, or amendment to a viatical  
64 settlement contract considered necessary by a viatical  
65 settlement provider to effectuate a viatical settlement contract  
66 transaction.

67 (7) "Related provider trust" means a titling trust or  
68 other trust established by a licensed viatical settlement  
69 provider or financing entity for the sole purpose of holding the  
70 ownership or beneficial interest in purchased policies in  
71 connection with a financing transaction. The trust must have a  
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72 written agreement with a licensed viatical settlement provider  
73 or financing entity under which the licensed viatical settlement  
74 provider or financing entity is responsible for insuring  
75 compliance with all statutory and regulatory requirements  
76 relating to viatical settlement contracts and under which the  
77 trust agrees to make all records and files relating to viatical  
78 settlement contracts ~~transactions~~ available to the office as if  
79 those records and files were maintained directly by the licensed  
80 viatical settlement provider. This term does not include an  
81 independent third-party trustee or escrow agent or a trust that  
82 does not enter into agreements with a viator. A related provider  
83 trust shall be subject to all provisions of this act that apply  
84 to the viatical settlement provider who established the related  
85 provider trust, except s. 626.9912, which shall not be  
86 applicable. A viatical settlement provider may establish no more  
87 than one related provider trust, and the sole trustee of such  
88 related provider trust shall be the viatical settlement provider  
89 licensed under s. 626.9912. The name of the licensed viatical  
90 settlement provider shall be included within the name of the  
91 related provider trust.

92 (8) "Special purpose entity" means an entity established  
93 by a licensed viatical settlement provider or by a financing  
94 entity, which may be a corporation, partnership, trust, limited  
95 liability company, or other similar entity formed solely to  
96 provide, either directly or indirectly, access to institutional  
97 capital markets to a viatical settlement provider or financing  
98 entity relating to viatical settlement contracts. A special  
99 purpose entity may not obtain capital from any natural person or  
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100 entity with less than \$50 million in assets and may not enter  
101 into a viatical settlement contract.

102 (9) "Viatical settlement broker" means a person who, on  
103 behalf of a viator and for a fee, commission, or other valuable  
104 consideration, offers or attempts to negotiate viatical  
105 settlement contracts between a viator ~~resident in this state~~ and  
106 one or more viatical settlement providers. Notwithstanding the  
107 manner in which the viatical settlement broker is compensated, a  
108 viatical settlement broker is deemed to represent only the  
109 viator and owes a fiduciary duty to the viator to act according  
110 to the viator's instructions and in the best interest of the  
111 viator. The term does not include an attorney, licensed  
112 Certified Public Accountant, or investment adviser lawfully  
113 registered under chapter 517, who is retained to represent the  
114 viator and whose compensation is paid directly by or at the  
115 direction and on behalf of the viator.

116 (10) "Viatical settlement contract," "viatical settlement  
117 transaction," or "transaction" means a written agreement entered  
118 into between a viatical settlement provider, or its related  
119 provider trust, and a viator. The viatical settlement contract  
120 includes an agreement to transfer ownership or change the  
121 beneficiary designation of a life insurance policy at a later  
122 date, regardless of the date that compensation is paid to the  
123 viator. The agreement must establish the terms under which the  
124 viatical settlement provider will pay compensation or anything  
125 of value, which compensation or value is less than the expected  
126 death benefit of the insurance policy or certificate, in return  
127 for the viator's assignment, transfer, sale, devise, or bequest

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128 of the death benefit or ownership of all or a portion of the  
129 insurance policy or certificate of insurance to the viatical  
130 settlement provider. A viatical settlement contract also  
131 includes a contract for a loan or other financial transaction  
132 with a resident of this state secured primarily by an individual  
133 or group life insurance policy, other than a loan by a life  
134 insurance company pursuant to the terms of the life insurance  
135 contract, or a loan secured by the cash value of a policy.

136 (14) "Viator" means a person resident of this state who is  
137 the owner of a life insurance policy or a certificateholder  
138 under a group policy, which policy is not a previously  
139 viaticated policy, who enters or seeks to enter into a viatical  
140 settlement contract. This term does not include a viatical  
141 settlement provider or any person acquiring a policy or interest  
142 in a policy from a viatical settlement provider, nor does it  
143 include an independent third-party trustee or escrow agent.

144 Section 8. Subsection (2) of section 626.9913, Florida  
145 Statutes, is amended to read:

146 626.9913 Viatical settlement provider license continuance;  
147 annual report; fees; deposit.—

148 (2) Annually, on or before March 1, the viatical  
149 settlement provider licensee shall file a statement containing  
150 information required by statute ~~the commission requires~~ and  
151 shall pay to the office a license fee in the amount of \$500.  
152 ~~After December 31, 2007,~~ The annual statement shall include an  
153 annual audited financial statement of the viatical settlement  
154 provider prepared in accordance with generally accepted  
155 accounting principles by an independent certified public

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156 accountant covering a 12-month period ending on a day falling  
157 during the last 6 months of the preceding calendar year. If the  
158 audited financial statement has not been completed, however, the  
159 licensee shall include in its annual statement an unaudited  
160 financial statement for the preceding calendar year and an  
161 affidavit from an officer of the licensee stating that the audit  
162 has not been completed. In this event, the licensee shall submit  
163 the audited statement on or before June 1. Audited and unaudited  
164 financial statements are subject to chapter 688 and ss.

165 624.4213, 812.081, and 815.045 and are protected as trade  
166 secrets. The annual statement, due on or before March 1 each  
167 year, shall also provide the office with a report of all life  
168 expectancy providers who have provided life expectancies  
169 ~~directly or indirectly~~ to the viatical settlement provider for  
170 use in connection with a viatical settlement contract ~~or a~~  
171 ~~viatical settlement investment.~~ A viatical settlement provider  
172 shall include in all statements filed with the office all  
173 information requested by the office regarding a related provider  
174 trust established by the viatical settlement provider. The  
175 office may adopt rules requiring the annual statement to contain  
176 information, only in the aggregate, relating to the volume and  
177 value of viatical settlement contracts entered into with viators  
178 ~~require more frequent reporting.~~ Failure to timely file the  
179 annual statement or the audited financial statement or to timely  
180 pay the license fee is grounds for immediate suspension of the  
181 license. The commission may by rule require all or part of the  
182 statements or filings required under this section to be  
183 submitted by electronic means in a computer-readable form

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184 compatible with the electronic data format specified by the  
185 commission.

186 Section 9. Paragraphs (b), (e), and (f) of subsection (1)  
187 of section 626.9914, Florida Statutes, are amended to read:

188 626.9914 Suspension, revocation, denial, or nonrenewal of  
189 viatical settlement provider license; grounds; administrative  
190 fine.—

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

194 (b) Has engaged in fraudulent or dishonest practices, or  
195 otherwise has been shown to be untrustworthy or incompetent ~~to~~  
196 ~~act~~ as a viatical settlement provider in conducting business  
197 under the license issued in this state;

198 (e) Has issued viatical settlement contracts on forms that  
199 have not been approved pursuant to this act;

200 (f) Has failed to honor contractual obligations related to  
201 ~~the business of~~ viatical settlement contracts;

202 Section 10. Subsection (1) of section 626.9915, Florida  
203 Statutes, is amended to read:

204 626.9915 Effect of suspension or revocation of viatical  
205 settlement provider license; duration of suspension;  
206 reinstatement.—

207 (1) When its license is suspended or revoked, the viatical  
208 settlement provider must proceed, immediately following the  
209 effective date of the suspension or revocation, to conclude the  
210 affairs it is transacting under its license. The provider may  
211 not solicit, negotiate, advertise, or effectuate new viatical  
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212 settlement contracts. The office retains jurisdiction over the  
213 provider until all viatical settlement contracts have been  
214 fulfilled or canceled or have expired. A provider whose license  
215 is suspended or revoked may continue to maintain and service  
216 viaticated policies subject to the approval of the office.

217 Section 11. Section 626.992, Florida Statutes, is amended  
218 to read:

219 626.992 Use of licensed viatical settlement providers,  
220 viatical settlement brokers, and registered life expectancy  
221 providers required.—

222 (1) A licensed viatical settlement provider may not use  
223 any person to perform the functions of a viatical settlement  
224 broker as defined in this act relating to a viatical settlement  
225 contract unless such person holds a current, valid life agent  
226 license and has appointed himself or herself in conformance with  
227 this chapter.

228 (2) A viatical settlement broker may not use any person to  
229 perform the functions of a viatical settlement provider, as  
230 defined in this act, relating to a viatical settlement contract  
231 unless such person holds a current, valid license as a viatical  
232 settlement provider.

233 (3) After July 1, 2006, a person may not operate as a life  
234 expectancy provider unless such person is registered as a life  
235 expectancy provider pursuant to this act.

236 (4) After July 1, 2006, a viatical settlement provider,  
237 viatical settlement broker, or any other person performing the  
238 functions of a viatical settlement provider or viatical  
239 settlement broker ~~in the business of viatical settlements~~ may

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240 not obtain life expectancies from a person who is not registered  
241 as a life expectancy provider pursuant to this act.

242 Section 12. Subsections (1) and (4) of section 626.9922,  
243 Florida Statutes, are amended to read:

244 626.9922 Examination.—

245 (1) The office or department may examine the business and  
246 affairs of any of its respective licensees or applicants for a  
247 license. With respect to applicants, the office or department  
248 may order any ~~such licensee or~~ applicant to produce any records,  
249 books, files, advertising and solicitation materials, or other  
250 information and may take statements under oath to determine  
251 whether the ~~licensee or~~ applicant meets the standards for  
252 granting a license is in violation of the law or is acting  
253 contrary to the public interest. With respect to licensees, the  
254 office or department may order any licensee to produce any  
255 records, books, files, advertising and solicitation materials,  
256 or other information and may take statements under oath to  
257 determine whether the licensee has violated any provision of  
258 this code within the office's or department's regulatory  
259 jurisdiction. The expenses incurred in conducting any  
260 examination or investigation must be paid by the licensee or  
261 applicant. Examinations and investigations must be conducted as  
262 provided in chapter 624, and licensees are subject to all  
263 applicable provisions of the insurance code.

264 (4) The ~~originals of~~ records required to be maintained  
265 under this section must be made available to the office or  
266 department for examination at the office's or department's  
267 request.

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268 Section 13. Section 626.9925, Florida Statutes, is amended  
269 to read:

270 626.9925 Rules.—The commission may adopt rules relating to  
271 viatical settlement contracts governed by the laws of this state  
272 to administer this act, including rules establishing standards  
273 for evaluating advertising by licensees; rules providing for the  
274 collection of data, for disclosures to viators, for the  
275 reporting of life expectancies, and for the registration of life  
276 expectancy providers; and rules ~~defining terms used in this act~~  
277 ~~and~~ prescribing recordkeeping requirements relating to executed  
278 viatical settlement contracts.

279 Section 14. Subsection (1) of section 626.9927, Florida  
280 Statutes, is amended to read:

281 626.9927 Unfair trade practices; cease and desist;  
282 injunctions; civil remedy.—

283 (1) A violation of this act is an unfair trade practice  
284 under ss. 626.9521 and 626.9541 and is subject to the penalties  
285 provided in the insurance code. Part IX of this chapter,  
286 entitled Unfair Insurance Trade Practices, applies to a licensee  
287 under this act whose conduct relates to a viatical settlement  
288 contract ~~or a transaction~~ subject to this act as if a viatical  
289 settlement contract were an insurance policy.

290 Section 15. Paragraphs (c) and (d) of subsection (1) of  
291 section 626.99275, Florida Statutes, are amended to read:

292 626.99275 Prohibited practices; penalties.—

293 (1) It is unlawful for any person:

294 (c) To knowingly engage in any transaction, practice, or  
295 course of business relating to transactions governed by the laws  
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296 of this state, intending thereby to avoid the notice  
297 requirements of s. 626.9924(7).

298 (d) Who is not a licensed viatical settlement provider in  
299 this state to knowingly or intentionally facilitate the change  
300 of state of residency of a viator to avoid the provisions of  
301 this chapter.

302 Section 16. Section 626.99278, Florida Statutes, is  
303 amended to read:

304 626.99278 Viatical provider anti-fraud plan.—With respect  
305 to transactions governed by the laws of this state, every  
306 licensed viatical settlement provider and registered life  
307 expectancy provider must adopt an anti-fraud plan and file it  
308 with the Division of Insurance Fraud of the department. Each  
309 anti-fraud plan shall include:

310 (1) A description of the procedures for detecting and  
311 investigating possible fraudulent acts and procedures for  
312 resolving material inconsistencies between medical records and  
313 insurance applications.

314 (2) A description of the procedures for the mandatory  
315 reporting of possible fraudulent insurance acts and prohibited  
316 practices set forth in s. 626.99275 to the Division of Insurance  
317 Fraud of the department.

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

320 (4) A written description or chart outlining the  
321 organizational arrangement of the anti-fraud personnel who are  
322 responsible for the investigation and reporting of possible  
323 fraudulent insurance acts and for the investigation of

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324 | unresolved material inconsistencies between medical records and  
325 | insurance applications.

326 | (5) For viatical settlement providers, a description of  
327 | the procedures used to perform initial and continuing review of  
328 | the accuracy of life expectancies used in connection with a  
329 | viatical settlement contract or viatical settlement investment.

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332 | -----

**T I T L E A M E N D M E N T**

333 |  
334 | Remove line 40 and insert:  
335 | before a specified time; creating s. 626.995, F.S.; limiting the  
336 | regulatory authority of the Office of Insurance Regulation  
337 | relating to viatical settlement contracts entered into with  
338 | residents of other states; amending s. 626.9911, F.S.; revising  
339 | definitions; amending s. 626.9913, F.S.; revising provisions  
340 | relating to certain annual reports that are required to be filed  
341 | by licensed viatical settlement providers; providing for  
342 | application and construction relating to the treatment of  
343 | audited and unaudited financial statements contained in such  
344 | reports as trade secrets; authorizing the office to adopt rules  
345 | requiring such reports to include certain information relating  
346 | to the volume and value of viatical settlement contracts;  
347 | amending s. 626.9914, F.S.; conforming provisions relating to  
348 | specified grounds for suspension, revocation, denial, or  
349 | nonrenewal of a viatical settlement provider license to  
350 | revisions made by this act; amending s. 626.9915, F.S.;  
351 | conforming provisions relating to the effect of suspension or  
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352 revocation of a viatical settlement provider license to  
353 revisions made by this act; amending s. 626.992, F.S.;  
354 conforming provisions relating to the required use of licensed  
355 individuals to perform functions relating to viatical settlement  
356 contracts to revisions made by this act; amending s. 626.9922,  
357 F.S.; revising provisions relating to the scope of the office's  
358 and department's authority to examine viatical settlement  
359 applicants and licensees; amending s. 626.9925, F.S.; limiting  
360 the current rulemaking authority of the Financial Services  
361 Commission to viatical settlement contracts governed by the laws  
362 of this state; amending s. 626.9927, F.S.; providing that  
363 violations by a licensee relating to a viatical settlement  
364 contract are unfair insurance trade practices and subject to  
365 specified penalties; amending s. 626.99275, F.S.; providing that  
366 it is unlawful for any person to engage in certain acts relating  
367 to transactions governed by the laws of this state; providing  
368 that it is unlawful for persons not licensed as a viatical  
369 settlement provider in this state to engage in certain actions;  
370 providing penalties; amending s. 626.99278, F.S.; limiting the  
371 required adoption of an anti-fraud plan by viatical settlement  
372 providers and registered life expectancy providers to a plan  
373 covering transactions governed by the laws of this state;  
374 providing an effective date.

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