

1 A bill to be entitled
2 An act relating to viatical settlements; amending s.
3 626.9911, F.S.; revising definitions; defining the
4 terms "business of viatical settlements," "fraudulent
5 viatical settlement act," and "stranger-originated
6 life insurance practice"; amending s. 626.9913, F.S.;
7 requiring additional information in an annual
8 statement filed by viatical settlement provider
9 licensees; deleting an obsolete provision regarding a
10 deposit requirement; authorizing the Financial
11 Services Commission to adopt rules; amending s.
12 626.9914, F.S.; adding an act that warrants the
13 imposition of administrative penalties against
14 viatical settlement provider licensees; increasing the
15 amount of administrative fines that may be imposed by
16 the Office of Insurance Regulation against licensees
17 for certain violations; amending s. 626.99175, F.S.;
18 deleting an obsolete provision; deleting an exception
19 from registration requirements for life expectancy
20 providers; creating s. 626.99185, F.S.; requiring
21 viatical settlement providers to provide viators with
22 a disclosure statement before or concurrently with a
23 viator's execution of a viatical settlement contract;
24 providing requirements and procedures for such
25 disclosure statements; amending s. 626.9924, F.S.;
26 correcting cross-references relating to a requirement

27 | to provide specified documents with a notice that a
28 | policy has or will become a viaticated policy;
29 | amending s. 626.99245, F.S.; conforming a cross-
30 | reference; creating s. 626.99273, F.S.; prohibiting
31 | certain practices and conflicts of interest relating
32 | to viatical settlement contracts or insurance
33 | policies; requiring a viatical settlement provider to
34 | file certain promotional, advertising, and marketing
35 | materials with the office before entering into
36 | viatical settlement contracts; prohibiting certain
37 | references relating to the cost of life insurance
38 | policies in such materials and other specified
39 | statements and representations; authorizing the
40 | commission to adopt rules; amending s. 626.99275,
41 | F.S.; prohibiting a person from entering into a
42 | viatical settlement contract before a specified date
43 | except under specified circumstances, from issuing,
44 | soliciting, marketing, or otherwise promoting the
45 | purchase of a policy under certain circumstances, and
46 | from engaging in a fraudulent viatical settlement act;
47 | providing criminal penalties for a violation of such
48 | prohibitions; creating s. 626.99276, F.S.; requiring
49 | specified affidavits and other documentation to be
50 | provided to an insurer for requests to verify coverage
51 | and to transfer a policy or certificate to a viatical
52 | settlement provider; prohibiting insurers from

53 requiring certain forms that have not been approved by
54 the office to be signed as a condition of responding
55 to such requests; requiring insurers to respond in
56 writing during a specified period to properly
57 completed requests to change the ownership or
58 beneficiary of a policy; amending s. 626.99278, F.S.;
59 providing requirements for licensed viatical
60 settlement providers to maintain specified
61 documentation relating to anti-fraud plans and
62 procedures, material inconsistencies between medical
63 records and insurance applications, and reporting of
64 specified fraudulent acts and prohibited practices;
65 amending s. 626.99287, F.S.; revising the period
66 during which certain viatical settlement contracts are
67 void and unenforceable; revising exceptions that make
68 such contracts void and unenforceable; creating s.
69 626.99289, F.S.; providing that certain contracts,
70 agreements, arrangements, and transactions relating to
71 stranger-originated life insurance practices are void
72 and unenforceable; providing an effective date.

73
74 Be It Enacted by the Legislature of the State of Florida:

75
76 Section 1. Section 626.9911, Florida Statutes, is amended
77 to read:

78 626.9911 Definitions.—As used in this act, the term:

79 (1) "Business of viatical settlements" means an activity
 80 involved in the offering, soliciting, negotiating, procuring,
 81 effectuating, purchasing, investing, monitoring, tracking,
 82 underwriting, selling, transferring, assigning, pledging, or
 83 hypothecating of, or acquiring in other manner, an interest in a
 84 life insurance policy by means of a viatical settlement
 85 contract.

86 (2) "Financing entity" means an underwriter, placement
 87 agent, lender, purchaser of securities, or purchaser of a policy
 88 or certificate from a viatical settlement provider, credit
 89 enhancer, or any entity that has direct ownership in a policy or
 90 certificate that is the subject of a viatical settlement
 91 contract, but whose principal activity related to the
 92 transaction is providing funds or credit enhancement to effect
 93 the viatical settlement or the purchase of one or more
 94 viaticated policies and who has an agreement in writing with one
 95 or more licensed viatical settlement providers to finance the
 96 acquisition of viatical settlement contracts. The term does not
 97 include a nonaccredited investor or other natural person. A
 98 financing entity may not enter into a viatical settlement
 99 contract.

100 (3) "Fraudulent viatical settlement act" means an act or
 101 omission committed by a person who, knowingly or with the intent
 102 to defraud for the purpose of depriving another of property or
 103 for pecuniary gain, commits or allows an employee or agent to
 104 commit an act specified in this subsection.

105 (a) Presenting, causing to be presented, or preparing with
 106 the knowledge or belief that it will be presented to or by
 107 another person false or concealed material information as part
 108 of, in support of, or concerning a fact material to:

109 1. An application for the issuance of a viatical
 110 settlement contract or an insurance policy;

111 2. The underwriting of a viatical settlement contract or
 112 an insurance policy;

113 3. A claim for payment or benefit pursuant to a viatical
 114 settlement contract or an insurance policy;

115 4. Premiums paid on an insurance policy;

116 5. Payments and changes in ownership or beneficiary made
 117 in accordance with the terms of a viatical settlement contract
 118 or an insurance policy;

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

120 7. The solicitation, offer, effectuation, or sale of a
 121 viatical settlement contract or an insurance policy;

122 8. The issuance of written evidence of a viatical
 123 settlement contract or an insurance policy; or

124 9. A financing transaction.

125 (b) Employing a plan, financial structure, device, scheme,
 126 or artifice to defraud related to viaticated policies.

127 (c) Engaging in a stranger-originated life insurance
 128 practice.

129 (d) Failing to disclose upon request by an insurer that
 130 the prospective insured has undergone a life expectancy

131 evaluation by a person other than the insurer or its authorized
 132 representatives in connection with the issuance of the policy.

133 (e) Perpetuating a fraud or preventing the detection of a
 134 fraud by:

135 1. Removing, concealing, altering, destroying, or
 136 sequestering from the office the assets or records of a licensee
 137 or other person engaged in the business of viatical settlements;

138 2. Misrepresenting or concealing the financial condition
 139 of a licensee, financing entity, insurer, or other person;

140 3. Transacting in the business of viatical settlements in
 141 violation of laws requiring a license, certificate of authority,
 142 or other legal authority to transact such business; or

143 4. Filing with the office or the equivalent chief
 144 insurance regulatory official of another jurisdiction a document
 145 that contains false information or conceals information about a
 146 material fact from the office or other regulatory official.

147 (f) Embezzlement, theft, misappropriation, or conversion
 148 of moneys, funds, premiums, credits, or other property of a
 149 viatical settlement provider, insurer, insured, viator,
 150 insurance policyowner, or other person engaged in the business
 151 of viatical settlements or insurance.

152 (g) Recklessly entering into, negotiating, brokering, or
 153 otherwise dealing in a viatical settlement contract, the subject
 154 of which is a life insurance policy that was obtained based on
 155 information that was falsified or concealed for the purpose of
 156 defrauding the policy's issuer, viatical settlement provider, or

157 viator. As used in this paragraph, the term "recklessly" means
158 acting or failing to act in conscious disregard for the relevant
159 facts or risks, and which disregard involves a gross deviation
160 from acceptable standards of conduct.

161 (h) Facilitating the viator's change of residency state to
162 avoid the provisions of this act.

163 (i) Facilitating or causing the creation of a trust with a
164 non-Florida situs or other nonresident entity for the purpose of
165 owning a life insurance policy covering a Florida resident to
166 avoid the provisions of this act.

167 (j) Facilitating or causing the transfer of the ownership
168 of an insurance policy covering a Florida resident to a trust
169 with a non-Florida situs or other nonresident entity to avoid
170 the provisions of this act.

171 (k) Applying for or obtaining a loan that is secured
172 directly or indirectly by an interest in a life insurance
173 policy.

174 (l) Violating s. 626.99273(1) or (2).

175 (m) Attempting to commit, assisting, aiding, or abetting
176 in the commission of or conspiring to commit an act or omission
177 specified in this subsection.

178 (4)-(2) "Independent third-party trustee or escrow agent"
179 means an attorney, certified public accountant, financial
180 institution, or other person providing escrow services under the
181 authority of a regulatory body. The term does not include any
182 person associated, affiliated, or under common control with a

183 viatical settlement provider or viatical settlement broker.

184 (5)~~(3)~~ "Life expectancy" means an opinion or evaluation as
 185 to how long a particular person is to live, or relating to such
 186 person's expected demise.

187 (6)~~(4)~~ "Life expectancy provider" means a person who
 188 determines, or holds himself or herself out as determining, life
 189 expectancies or mortality ratings used to determine life
 190 expectancies under any of the following circumstances:

191 (a) On behalf of a viatical settlement provider, viatical
 192 settlement broker, life agent, or person engaged in the business
 193 of viatical settlements.~~;~~

194 (b) In connection with a viatical settlement investment,
 195 pursuant to s. 517.021(24).~~;~~~~or~~

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

198 (7)~~(5)~~ "Person" has the meaning specified in s. 1.01.

199 (8)~~(6)~~ "Related form" means any form, created by or on
 200 behalf of a licensee, which a viator or insured is required to
 201 sign or initial. The forms include, but are not limited to, a
 202 power of attorney, a release of medical information form, a
 203 suitability questionnaire, a disclosure document, or any
 204 addendum, schedule, or amendment to a viatical settlement
 205 contract considered necessary by a provider to effectuate a
 206 viatical settlement transaction.

207 (9)~~(7)~~ "Related provider trust" means a titling trust or
 208 other trust established by a licensed viatical settlement

209 provider or financing entity for the sole purpose of holding the
 210 ownership or beneficial interest in purchased policies in
 211 connection with a financing transaction. The trust must have a
 212 written agreement with a licensed viatical settlement provider
 213 or financing entity under which the licensed viatical settlement
 214 provider or financing entity is responsible for insuring
 215 compliance with all statutory and regulatory requirements and
 216 under which the trust agrees to make all records and files
 217 relating to viatical settlement transactions available to the
 218 office as if those records and files were maintained directly by
 219 the licensed viatical settlement provider. This term does not
 220 include an independent third-party trustee or escrow agent or a
 221 trust that does not enter into agreements with a viator. A
 222 related provider trust is ~~shall be~~ subject to all provisions of
 223 this act that apply to the viatical settlement provider who
 224 established the related provider trust, except s. 626.9912,
 225 which does ~~shall~~ not apply ~~be applicable~~. A viatical settlement
 226 provider may establish up to ~~no more than~~ one related provider
 227 trust, and the sole trustee of such related provider trust shall
 228 be the viatical settlement provider licensed under s. 626.9912.
 229 The name of the licensed viatical settlement provider shall be
 230 included within the name of the related provider trust.

231 (10) ~~(8)~~ "Special purpose entity" means an entity
 232 established by a licensed viatical settlement provider or by a
 233 financing entity, which may be a corporation, partnership,
 234 trust, limited liability company, or other similar entity formed

235 solely to provide, either directly or indirectly, access to
236 institutional capital markets to a viatical settlement provider
237 or financing entity. A special purpose entity may not obtain
238 capital from any natural person or entity with less than \$50
239 million in assets and may not enter into a viatical settlement
240 contract.

241 (11) "Stranger-originated life insurance practice" means
242 an act, practice, arrangement, or agreement to initiate a life
243 insurance policy for the benefit of a third-party investor who,
244 at the time of policy origination, has no insurable interest in
245 the insured. Stranger-originated life insurance practices
246 include, but are not limited to:

247 (a) The purchase of a life insurance policy with resources
248 or guarantees from or through a person who, at the time of such
249 policy's inception, could not lawfully initiate the policy and
250 the execution of a verbal or written arrangement or agreement to
251 directly or indirectly transfer the ownership of such policy or
252 policy benefits to a third party.

253 (b) The creation of a trust or other entity that has the
254 appearance of an insurable interest to initiate policies for
255 investors, which violates insurable interest laws and the
256 prohibition against wagering on life.

257 (12)-(9) "Viatical settlement broker" means a person who,
258 on behalf of a viator and for a fee, commission, or other
259 valuable consideration, offers or attempts to negotiate viatical
260 settlement contracts between a viator resident in this state and

261 one or more viatical settlement providers. Notwithstanding the
262 manner in which the viatical settlement broker is compensated, a
263 viatical settlement broker is deemed to represent only the
264 viator and owes a fiduciary duty to the viator to act according
265 to the viator's instructions and in the best interest of the
266 viator. The term does not include an attorney, licensed
267 Certified Public Accountant, or investment adviser lawfully
268 registered under chapter 517, who is retained to represent the
269 viator and whose compensation is paid directly by or at the
270 direction and on behalf of the viator.

271 (13)~~(10)~~ "Viatical settlement contract" means a written
272 agreement entered into between a viatical settlement provider,
273 or its related provider trust, and a viator. The viatical
274 settlement contract includes an agreement to transfer ownership
275 or change the beneficiary designation of a life insurance policy
276 at a later date, regardless of the date that compensation is
277 paid to the viator. The agreement must establish the terms under
278 which the viatical settlement provider will pay compensation or
279 anything of value, which compensation or value is less than the
280 expected death benefit of the insurance policy or certificate,
281 in return for the viator's assignment, transfer, sale, devise,
282 or bequest of the death benefit or ownership of all or a portion
283 of the insurance policy or certificate of insurance to the
284 viatical settlement provider. The term also includes the
285 transfer for compensation or value of an ownership or a
286 beneficial interest in a trust or other entity that owns such

287 policy if the trust or other entity was formed or used for the
 288 principal purpose of acquiring one or more life insurance
 289 contracts that insure the life of a person residing in this
 290 state, and ~~A viatical settlement contract also includes a~~
 291 contract for a loan or other financial transaction secured
 292 primarily by an individual or group life insurance policy. The
 293 term does not include, ~~other than~~ a policy loan by a life
 294 insurance company pursuant to the terms of the life insurance
 295 contract or accelerated death provisions contained in a life
 296 insurance policy, whether issued with the original policy or as
 297 a rider, ~~or~~ a loan secured by the cash surrender value of a
 298 policy as determined by the policy issuer and the life insurance
 299 policy terms, or a loan or advance from the issuer of the policy
 300 to the policyowner.

301 (14)~~(11)~~ "Viatical settlement investment" has the same
 302 meaning as specified in s. 517.021.

303 (15)~~(12)~~ "Viatical settlement provider" means a person
 304 who, in this state, from this state, or with a resident of this
 305 state, effectuates a viatical settlement contract. The term does
 306 not include:

307 (a) A ~~Any~~ bank, savings bank, savings and loan
 308 association, or credit union,~~or other licensed lending~~
 309 ~~institution~~ that takes an assignment of a life insurance policy
 310 as collateral for a loan.

311 (b) A life and health insurer that has lawfully issued a
 312 life insurance policy that provides accelerated benefits to

313 terminally ill policyholders or certificateholders.

314 (c) A ~~Any~~ natural person who enters into no more than one
 315 viatical settlement contract with a viator in 1 calendar year,
 316 unless such natural person has previously been licensed under
 317 this act or is currently licensed under this act.

318 (d) A trust that meets the definition of a "related
 319 provider trust."

320 (e) A viator in this state.

321 (f) A financing entity.

322 (16) ~~(13)~~ "Viaticated policy" means a life insurance
 323 policy, or a certificate under a group policy, which is the
 324 subject of a viatical settlement contract.

325 (17) ~~(14)~~ "Viator" means the owner of a life insurance
 326 policy or a certificateholder under a group policy, which policy
 327 is not a previously viaticated policy, who enters or seeks to
 328 enter into a viatical settlement contract. This term does not
 329 include a viatical settlement provider, ~~or a~~ a ~~any~~ person
 330 acquiring a policy or interest in a policy from a viatical
 331 settlement provider, or ~~nor does it include~~ an independent
 332 third-party trustee or escrow agent.

333 Section 2. Subsections (2) and (3) of section 626.9913,
 334 Florida Statutes, are amended, and subsection (6) is added to
 335 that section, to read:

336 626.9913 Viatical settlement provider license continuance;
 337 annual report; fees; deposit.—

338 (2) (a) Annually, on or before March 1, the viatical

339 settlement provider licensee shall file a statement containing
340 information the commission requires and shall pay to the office
341 a license fee in the amount of \$500.

342 (b) In addition to any other requirements, the annual
343 statement must specify:

344 1. The total number of unsettled viatical settlement
345 contracts and corresponding total amount due to viators under
346 viatical settlement contracts that have been signed by the
347 viator but have not been settled as of December 31 of the
348 preceding calendar year, categorized by the number of days since
349 the viator signed the contract for transactions regulated by
350 this state.

351 2. For each of the most recent 5 years, the total number
352 of policies purchased, total gross amount paid for policies
353 purchased, total commissions or compensation paid for policies
354 purchased, and total face value of policies purchased, allocated
355 by state, territory, and jurisdiction.

356 3. For the most recent calendar year, the total amount of
357 proceeds or compensation paid to policyowners, allocated by
358 state, territory, and jurisdiction.

359 (c) After ~~December 31, 2007,~~ The annual statement shall
360 include an annual audited financial statement of the viatical
361 settlement provider prepared in accordance with generally
362 accepted accounting principles by an independent certified
363 public accountant covering a 12-month period ending on a day
364 occurring within ~~falling during~~ the last 6 months of the

365 preceding calendar year. If the audited financial statement has
366 not been completed, however, the licensee shall include in its
367 annual statement an unaudited financial statement for the
368 preceding calendar year and an affidavit from an officer of the
369 licensee stating that the audit has not been completed. In this
370 event, the licensee shall submit the audited statement on or
371 before June 1. The annual statement, due on or before March 1
372 each year, shall also provide the office with a report of all
373 life expectancy providers who have provided life expectancies
374 directly or indirectly to the viatical settlement provider for
375 use in connection with a viatical settlement contract or a
376 viatical settlement investment. A viatical settlement provider
377 shall include in all statements filed with the office all
378 information requested by the office regarding a related provider
379 trust established by the viatical settlement provider. The
380 office may require more frequent reporting. Failure to timely
381 file the annual statement or the audited financial statement or
382 to timely pay the license fee is grounds for immediate
383 suspension of the license. The commission may by rule require
384 all or part of the statements or filings required under this
385 section to be submitted by electronic means in a computer-
386 readable form compatible with the electronic data format
387 specified by the commission.

388 (3) To ensure the faithful performance of its obligations
389 to its viators in the event of insolvency or the loss of its
390 license, a viatical settlement provider licensee must deposit

391 and maintain deposited in trust with the department securities
 392 eligible for deposit under s. 625.52, having at all times a
 393 value of not less than \$100,000; ~~however, a viatical settlement~~
 394 ~~provider licensed in this state prior to June 1, 2004, which has~~
 395 ~~deposited and maintains continuously deposited in trust with the~~
 396 ~~department securities in the amount of \$25,000 and which posted~~
 397 ~~and maintains continuously posted a security bond acceptable to~~
 398 ~~the department in the amount of \$75,000, has until June 1, 2005,~~
 399 ~~to comply with the requirements of this subsection.~~

400 (6) The commission may adopt rules to implement this
 401 section.

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

404 626.9914 Suspension, revocation, denial, or nonrenewal of
 405 viatical settlement provider license; grounds; administrative
 406 fine.—

407 (1) The office shall suspend, revoke, deny, or refuse to
 408 renew the license of any viatical settlement provider if the
 409 office finds that the licensee has committed any of the
 410 following acts:

411 (a) Has made a misrepresentation in the application for
 412 the license. ~~†~~

413 (b) Has engaged in fraudulent or dishonest practices, or
 414 otherwise has been shown to be untrustworthy or incompetent to
 415 act as a viatical settlement provider. ~~†~~

416 (c) Demonstrates a pattern of unreasonable payments to

417 viators.†

418 (d) Has been found guilty of, or has pleaded guilty or
 419 nolo contendere to, any felony, or a misdemeanor involving fraud
 420 or moral turpitude, regardless of whether a judgment of
 421 conviction has been entered by the court.†

422 (e) Has issued viatical settlement contracts that have not
 423 been approved pursuant to this act.†

424 (f) Has failed to honor contractual obligations related to
 425 the business of viatical settlement contracts.†

426 (g) Deals in bad faith with viators.†

427 (h) Has violated any provision of the insurance code or of
 428 this act.†

429 (i) Employs or contracts with a ~~any~~ person who materially
 430 influences the licensee's conduct and who fails to meet the
 431 requirements of this act.†

432 (j) No longer meets the requirements for initial
 433 licensure.†~~or~~

434 (k) Obtains or utilizes life expectancies from life
 435 expectancy providers who are not registered with the office
 436 pursuant to this act.

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

438 (2) The office may, in lieu of or in addition to any
 439 suspension or revocation, assess an administrative fine not to
 440 exceed \$10,000 ~~\$2,500~~ for each nonwillful violation or \$25,000
 441 ~~\$10,000~~ for each willful violation by a viatical settlement
 442 provider licensee. The office may also place a viatical

443 settlement provider licensee on probation for a period not to
 444 exceed 2 years.

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

447 626.99175 Life expectancy providers; registration
 448 required; denial, suspension, revocation.—

449 (1) ~~After July 1, 2006,~~ A person may not perform the
 450 functions of a life expectancy provider without first having
 451 registered as a life expectancy provider, ~~except as provided in~~
 452 ~~subsection (6).~~

453 Section 5. Section 626.99185, Florida Statutes, is created
 454 to read:

455 626.99185 Disclosures to viator of disbursement.—

456 (1) Before or concurrently with a viator's execution of a
 457 viatical settlement contract, the viatical settlement provider
 458 shall provide to the viator, in duplicate, a disclosure
 459 statement in legible written form disclosing:

460 (a) The name of each viatical settlement broker who
 461 receives or will receive compensation and the amount of each
 462 broker's compensation related to that transaction. For the
 463 purpose of this section, compensation includes anything of value
 464 paid or given by or at the direction of a viatical settlement
 465 provider or person acquiring an interest in one or more life
 466 insurance policies to a viatical settlement broker in connection
 467 with the viatical settlement contract.

468 (b) A complete reconciliation of the gross offer or bid by

469 the viatical settlement provider to the net amount of proceeds
470 or value to be received by the viator related to that
471 transaction. As used in this section, the term "gross offer" or
472 "bid" means the total amount or value offered by the viatical
473 settlement provider for the purchase of an interest in one or
474 more life insurance policies, including commissions,
475 compensation, or other proceeds or value being deducted from the
476 gross offer or bid.

477 (2) The viator shall sign and date the disclosure
478 statement before or concurrently with the viator's execution of
479 a viatical settlement contract, with the viator retaining the
480 duplicate copy of the disclosure statement.

481 (3) If a viatical settlement contract is entered into and
482 the contract is subsequently amended or if there is a change in
483 the viatical settlement provider's gross offer or bid amount, a
484 change in the net amount of proceeds or value to be received by
485 the viator, or a change in the information provided in the
486 disclosure statement to the viator, the viatical settlement
487 provider shall provide, in duplicate, an amended disclosure
488 statement to the viator containing the information in subsection
489 (1). The viator shall sign and date the amended disclosure
490 statement, with the viator retaining the duplicate copy of the
491 amended disclosure statement.

492 (4) Before a viatical settlement provider's execution of a
493 viatical settlement contract or an amendment to such contract,
494 the viatical settlement provider must obtain the signed and

495 dated disclosure statement and any amended disclosure statement
 496 required by this section. In transactions for which a broker is
 497 not used, the viatical settlement provider must obtain the
 498 signed and dated disclosure statement from the viator.

499 (5) The viatical settlement provider shall maintain the
 500 documentation required by this section pursuant to s.
 501 626.9922(2) and shall make such documentation available to the
 502 office at any time for copying and inspection upon reasonable
 503 notice by the office to the viatical settlement provider.

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

506 626.9924 Viatical settlement contracts; procedures;
 507 rescission.—

508 (7) At any time during the contestable period, within 20
 509 days after a viator executes documents necessary to transfer
 510 rights under an insurance policy or within 20 days of any
 511 agreement, option, promise, or any other form of understanding,
 512 express or implied, to viaticate the policy, the provider must
 513 give notice to the insurer of the policy that the policy has or
 514 will become a viaticated policy. The notice must be accompanied
 515 by the documents required by ss. 626.99276 and 626.99287 ~~ss.~~
 516 ~~626.99287(5)(a)~~ in their entirety.

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

519 626.99245 Conflict of regulation of viaticals.—

520 (2) This section does not affect the requirement of ss.

521 626.9911~~(15)~~~~(12)~~ and 626.9912(1) that a viatical settlement
522 provider doing business from this state must obtain a viatical
523 settlement license from the office. As used in this subsection,
524 the term "doing business from this state" includes effectuating
525 viatical settlement contracts from offices in this state,
526 regardless of the state of residence of the viator.

527 Section 8. Section 626.99273, Florida Statutes, is created
528 to read:

529 626.99273 Prohibited practices and conflicts of interest.-

530 (1) With respect to a viatical settlement contract or an
531 insurance policy, a viatical settlement broker may not knowingly
532 solicit an offer from, effectuate a viatical settlement with, or
533 make a sale to any viatical settlement provider, financing
534 entity, or related provider trust that is controlling,
535 controlled by, or under common control with such viatical
536 settlement broker.

537 (2) With respect to a viatical settlement contract or an
538 insurance policy, a viatical settlement provider may not
539 knowingly enter into a viatical settlement contract with a
540 viator if, in connection with such viatical settlement contract,
541 anything of value will be paid to a viatical settlement broker
542 that is controlling, controlled by, or under common control with
543 such viatical settlement provider, financing entity, or related
544 provider trust that is involved in such viatical settlement
545 contract.

546 (3) A viatical settlement provider may not enter into a

547 viatical settlement contract unless the viatical settlement
548 promotional, advertising, and marketing materials, as may be
549 prescribed by rule, have been filed with the office. Such
550 materials may not expressly indicate, or include any reference
551 that would cause a viator to reasonably believe, that the life
552 insurance is free for any period of time.

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

559 (5) The commission may adopt rules to implement this
560 section.

561 Section 9. Section 626.99275, Florida Statutes, is amended
562 to read:

563 626.99275 Prohibited practices; penalties.—

564 (1) It is unlawful for a ~~any~~ person to:

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

573 (b) ~~Who~~ Knowingly or with the intent to defraud, for the
574 purpose of depriving another of property or for pecuniary gain,
575 issue or use a pattern of false, misleading, or deceptive life
576 expectancies.

577 (c) ~~Who~~ Knowingly engage in any transaction, practice, or
578 course of business intending thereby to avoid the notice
579 requirements of s. 626.9924(7).

580 (d) ~~Who~~ Knowingly or intentionally facilitate the change of
581 state of residency of a viator to avoid the provisions of this
582 chapter.

583 (e) Knowingly enter into a viatical settlement contract
584 before the application for or issuance of a life insurance
585 policy that is the subject of a viatical settlement contract or
586 during the 5-year period commencing on the date of issuance of
587 the policy or certificate, unless the viator provides a sworn
588 affidavit and accompanying documentation in accordance with s.
589 626.9987.

590 (f) Knowingly issue, solicit, market, or otherwise promote
591 the purchase of a life insurance policy for the purpose of or
592 with an emphasis on selling the policy.

593 (g) Engage in a fraudulent viatical settlement act.

594 (2) A person who violates any provision of this section
595 commits:

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

599 (b) A felony of the second degree, punishable as provided
600 in s. 775.082, s. 775.083, or s. 775.084, if the insurance
601 policy involved is valued at \$20,000 or more, but less than
602 \$100,000.

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

606 Section 10. Section 626.99276, Florida Statutes, is
607 created to read:

608 626.99276 Notification to insurer required.—

609 (1) A copy of the sworn affidavit and the documentation
610 required in s. 626.99287 must be submitted to the insurer if the
611 viatical settlement provider or other party entering into a
612 viatical settlement contract with a viator submits a request to
613 the insurer for verification of coverage or if the viatical
614 settlement provider submits a request to transfer the policy or
615 certificate to the provider. If the request is made by a
616 viatical settlement provider, the copy shall be accompanied by a
617 sworn affidavit from the viatical settlement provider affirming
618 that the copy is a true and correct copy of the documentation
619 received by the provider.

620 (2) An insurer may not require, as a condition of
621 responding to a request for verification of coverage or
622 effecting the transfer of a policy pursuant to a viatical
623 settlement contract, that the viator, insured, viatical
624 settlement provider, or viatical settlement broker sign any

625 disclosures, consent form, waiver form, or other form that has
 626 not been approved by the office for use in connection with
 627 viatical settlement contracts in this state.

628 (3) Upon receipt of a properly completed request for
 629 change of ownership or beneficiary of a policy, the insurer
 630 shall respond in writing within 30 calendar days confirming that
 631 the change has been effectuated or specifying the reasons why
 632 the requested change cannot be processed. The insurer may not
 633 unreasonably delay effectuating a change of ownership or
 634 beneficiary and may not otherwise seek to interfere with any
 635 viatical settlement contract lawfully entered into in this
 636 state.

637 Section 11. Section 626.99278, Florida Statutes, is
 638 amended to read:

639 626.99278 Viatical provider anti-fraud plan.—

640 (1) Each ~~Every~~ licensed viatical settlement provider and
 641 registered life expectancy provider must adopt an anti-fraud
 642 plan and file it with the Division of Insurance Fraud of the
 643 department. Each anti-fraud plan shall include:

644 (a) ~~(1)~~ A description of the procedures for detecting and
 645 investigating possible fraudulent acts and procedures for
 646 resolving material inconsistencies between medical records and
 647 insurance applications.

648 (b) ~~(2)~~ A description of the procedures for the mandatory
 649 reporting of possible fraudulent insurance acts and prohibited
 650 practices specified ~~set forth~~ in s. 626.99275 to the Division of

651 Insurance Fraud ~~of the department.~~

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

654 (d)~~(4)~~ A written description or chart outlining the
655 organizational arrangement of the anti-fraud personnel who are
656 responsible for the investigation and reporting of possible
657 fraudulent insurance acts and for the investigation of
658 unresolved material inconsistencies between medical records and
659 insurance applications.

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

664 (2) Each licensed viatical settlement provider shall
665 maintain in accordance with s. 626.9922:

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

668 (b) Documentation pertaining to resolved and unresolved
669 material inconsistencies between medical records and insurance
670 applications.

671 (c) Documentation of its mandatory reporting of the
672 possible fraudulent acts and prohibited practices specified in
673 s. 626.99275 to the Division of Insurance Fraud.

674 Section 12. Section 626.99287, Florida Statutes, is
675 amended, to read:

676 626.99287 Contestability of viaticated policies.—Except as

677 hereinafter provided, if a viatical settlement contract is
678 entered into during ~~within~~ the 5-year ~~2-year~~ period commencing
679 on ~~with~~ the date of issuance of the insurance policy or
680 certificate to be acquired, the viatical settlement contract is
681 void and unenforceable by either party. Notwithstanding this
682 limitation, such a viatical settlement contract is not void and
683 unenforceable if the viator provides a sworn affidavit and
684 accompanying documentation that certifies to the viatical
685 settlement provider that one or more of the following conditions
686 were met during the 5-year period:

687 (1) The policy was issued upon the owner's exercise of
688 conversion rights arising out of a group or term policy, if the
689 total time covered under the prior policy is at least 60 months.
690 The time covered under a group policy shall be calculated
691 without regard to any change in insurance carriers, provided the
692 coverage has been continuous and under the same group
693 sponsorship;

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

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

697 ~~(4) The viatical settlement contract was entered into~~
698 ~~before July 1, 2000;~~

699 ~~(4)-(5)~~ (4) The viator certifies by producing independent
700 evidence to the viatical settlement provider that one or more of
701 the following conditions were ~~have been~~ met during ~~within~~ the 5-
702 year ~~2-year~~ period:

703 (a)~~1.~~ The viator or insured is terminally or chronically
 704 ill ~~diagnosed with an illness or condition that is either:~~
 705 a. ~~Catastrophic or life threatening; or~~
 706 b. ~~Requires a course of treatment for a period of at least~~
 707 ~~3 years of long term care or home health care; and~~
 708 2. the condition was not known to the insured at the time
 709 the life insurance contract was entered into;i.
 710 (b) The viator's spouse dies;
 711 (c) The viator divorces his or her spouse;
 712 (d) The viator retires from full-time employment;
 713 (e) The viator becomes physically or mentally disabled and
 714 a physician determines that the disability prevents the viator
 715 from maintaining full-time employment;
 716 (f) The owner of the policy was the insured's employer at
 717 the time the policy or certificate was issued and the employment
 718 relationship terminated;
 719 (g) A final order, judgment, or decree is entered by a
 720 court of competent jurisdiction, on the application of a
 721 creditor of the viator, adjudicating the viator bankrupt or
 722 insolvent, or approving a petition seeking reorganization of the
 723 viator or appointing a receiver, trustee, or liquidator to all
 724 or a substantial part of the viator's assets; or
 725 (h) The viator experiences a significant decrease in
 726 income which is unexpected by the viator and which impairs his
 727 or her reasonable ability to pay the policy premium.
 728 (5) The viator entered into a viatical settlement contract

729 more than 2 years after the policy's issuance date and, with
730 respect to the policy, at all times before such date each of the
731 following conditions were met:

732 (a) Policy premiums were funded exclusively with
733 unencumbered assets, including an interest in the life insurance
734 policy being financed but only to the extent of its net cash
735 surrender value provided by or full recourse liability incurred
736 by the insured;

737 (b) An agreement or understanding with another person was
738 not entered into to guarantee any such liability or to purchase,
739 or agree to purchase, the policy, including through an
740 assumption or forgiveness of the loan; and

741 (c) The insured and the policy were not evaluated for
742 settlement.

743
744 ~~If the viatical settlement provider submits to the insurer a~~
745 ~~copy of the viator's or owner's certification described above,~~
746 ~~then the provider submits a request to the insurer to effect the~~
747 ~~transfer of the policy or certificate to the viatical settlement~~
748 ~~provider, the viatical settlement agreement shall not be void or~~
749 ~~unenforceable by operation of this section. The insurer shall~~
750 ~~timely respond to such request. Nothing in this section shall~~
751 ~~prohibit an insurer from exercising its right during the~~
752 ~~contestability period to contest the validity of any policy on~~
753 ~~grounds of fraud.~~

754 Section 13. Section 626.99289, Florida Statutes, is

CS/CS/HB 445

2016

755 created to read:

756 626.99289 Void and unenforceable contracts, agreements,
757 arrangements, and transactions.-A contract, agreement,
758 arrangement, or transaction, including, but not limited to, a
759 financing agreement or any other arrangement or understanding
760 entered into, whether written or verbal, for the furtherance or
761 aid of a stranger-originated life insurance practice is void and
762 unenforceable.

763 Section 14. This act shall take effect July 1, 2016.