



184016

LEGISLATIVE ACTION

Senate	.	House
Comm: RCS	.	
01/27/2016	.	
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The Committee on Banking and Insurance (Richter) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

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

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

(1) “Business of viatical settlements” means an activity
involved in the offering, soliciting, negotiating, procuring,
effectuating, purchasing, investing, monitoring, tracking,



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11 underwriting, selling, transferring, assigning, pledging, or
12 hypothecating of, or acquiring in other manner, an interest in a
13 life insurance policy by means of a viatical settlement
14 contract.

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

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

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

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



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40 2. The underwriting of a viatical settlement contract or an
41 insurance policy;

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

44 4. Premiums paid on an insurance policy;

45 5. Payments and changes in ownership or beneficiary made in
46 accordance with the terms of a viatical settlement contract or
47 an insurance policy;

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

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

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

53 9. A financing transaction.

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

56 (c) Engaging in a stranger-originated life insurance
57 practice.

58 (d) Failing to disclose upon request by an insurer that the
59 prospective insured has undergone a life expectancy evaluation
60 by a person other than the insurer or its authorized
61 representatives in connection with the issuance of the policy.

62 (e) Perpetuating a fraud or preventing the detection of a
63 fraud by:

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

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



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

72 4. Filing with the office or the equivalent chief insurance
73 regulatory official of another jurisdiction a document that
74 contains false information or conceals information about a
75 material fact from the office or other regulatory official.

76 (f) Embezzlement, theft, misappropriation, or conversion of
77 moneys, funds, premiums, credits, or other property of a
78 viatical settlement provider, insurer, insured, viator,
79 insurance policyowner, or other person engaged in the business
80 of viatical settlements or insurance.

81 (g) Recklessly entering into, negotiating, brokering, or
82 otherwise dealing in a viatical settlement contract, the subject
83 of which is a life insurance policy that was obtained based on
84 information that was falsified or concealed for the purpose of
85 defrauding the policy's issuer, viatical settlement provider, or
86 viator. As used in this paragraph, the term "recklessly" means
87 acting or failing to act in conscious disregard for the relevant
88 facts or risks, and which disregard involves a gross deviation
89 from acceptable standards of conduct.

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

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

96 (j) Facilitating or causing the transfer of the ownership
97 of an insurance policy covering a Florida resident to a trust



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98 with a non-Florida situs or other nonresident entity to avoid
99 the provisions of this act.

100 (k) Applying for or obtaining a loan that is secured
101 directly or indirectly by an interest in a life insurance
102 policy.

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

104 (m) Attempting to commit, assisting, aiding, or abetting in
105 the commission of or conspiring to commit an act or omission
106 specified in this subsection.

107 (4)(2) "Independent third-party trustee or escrow agent"
108 means an attorney, certified public accountant, financial
109 institution, or other person providing escrow services under the
110 authority of a regulatory body. The term does not include any
111 person associated, affiliated, or under common control with a
112 viatical settlement provider or viatical settlement broker.

113 (5)(3) "Life expectancy" means an opinion or evaluation as
114 to how long a particular person is to live, or relating to such
115 person's expected demise.

116 (6)(4) "Life expectancy provider" means a person who
117 determines, or holds himself or herself out as determining, life
118 expectancies or mortality ratings used to determine life
119 expectancies under any of the following circumstances:

120 (a) On behalf of a viatical settlement provider, viatical
121 settlement broker, life agent, or person engaged in the business
122 of viatical settlements.

123 (b) In connection with a viatical settlement investment,
124 pursuant to s. 517.021(24).

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



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127 ~~(7)(5)~~ "Person" has the meaning specified in s. 1.01.
128 ~~(8)(6)~~ "Related form" means any form, created by or on
129 behalf of a licensee, which a viator or insured is required to
130 sign or initial. The forms include, but are not limited to, a
131 power of attorney, a release of medical information form, a
132 suitability questionnaire, a disclosure document, or any
133 addendum, schedule, or amendment to a viatical settlement
134 contract considered necessary by a provider to effectuate a
135 viatical settlement transaction.

136 ~~(9)(7)~~ "Related provider trust" means a titling trust or
137 other trust established by a licensed viatical settlement
138 provider or financing entity for the sole purpose of holding the
139 ownership or beneficial interest in purchased policies in
140 connection with a financing transaction. The trust must have a
141 written agreement with a licensed viatical settlement provider
142 or financing entity under which the licensed viatical settlement
143 provider or financing entity is responsible for insuring
144 compliance with all statutory and regulatory requirements and
145 under which the trust agrees to make all records and files
146 relating to viatical settlement transactions available to the
147 office as if those records and files were maintained directly by
148 the licensed viatical settlement provider. This term does not
149 include an independent third-party trustee or escrow agent or a
150 trust that does not enter into agreements with a viator. A
151 related provider trust is ~~shall be~~ subject to all provisions of
152 this act that apply to the viatical settlement provider who
153 established the related provider trust, except s. 626.9912,
154 which does ~~shall~~ not apply ~~be applicable~~. A viatical settlement
155 provider may establish up to no more than one related provider



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156 trust, and the sole trustee of such related provider trust shall
157 be the viatical settlement provider licensed under s. 626.9912.
158 The name of the licensed viatical settlement provider shall be
159 included within the name of the related provider trust.

160 (10)~~(8)~~ "Special purpose entity" means an entity
161 established by a licensed viatical settlement provider or by a
162 financing entity, which may be a corporation, partnership,
163 trust, limited liability company, or other similar entity formed
164 solely to provide, either directly or indirectly, access to
165 institutional capital markets to a viatical settlement provider
166 or financing entity. A special purpose entity may not obtain
167 capital from any natural person or entity with less than \$50
168 million in assets and may not enter into a viatical settlement
169 contract.

170 (11) "Stranger-originated life insurance practice" means an
171 act, practice, arrangement, or agreement to initiate a life
172 insurance policy for the benefit of a third-party investor who,
173 at the time of policy origination, has no insurable interest in
174 the insured. Stranger-originated life insurance practices
175 include, but are not limited to:

176 (a) The purchase of a life insurance policy with resources
177 or guarantees from or through a person who, at the time of such
178 policy's inception, could not lawfully initiate the policy and
179 the execution of a verbal or written arrangement or agreement to
180 directly or indirectly transfer the ownership of such policy or
181 policy benefits to a third party.

182 (b) The creation of a trust or other entity that has the
183 appearance of an insurable interest to initiate policies for
184 investors, which violates insurable interest laws and the



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185 prohibition against wagering on life.

186 (12)~~(9)~~ "Viatical settlement broker" means a person who, on
187 behalf of a viator and for a fee, commission, or other valuable
188 consideration, offers or attempts to negotiate viatical
189 settlement contracts between a viator resident in this state and
190 one or more viatical settlement providers. Notwithstanding the
191 manner in which the viatical settlement broker is compensated, a
192 viatical settlement broker is deemed to represent only the
193 viator and owes a fiduciary duty to the viator to act according
194 to the viator's instructions and in the best interest of the
195 viator. The term does not include an attorney, licensed
196 Certified Public Accountant, or investment adviser lawfully
197 registered under chapter 517, who is retained to represent the
198 viator and whose compensation is paid directly by or at the
199 direction and on behalf of the viator.

200 (13)~~(10)~~ "Viatical settlement contract" means a written
201 agreement entered into between a viatical settlement provider,
202 or its related provider trust, and a viator. The viatical
203 settlement contract includes an agreement to transfer ownership
204 or change the beneficiary designation of a life insurance policy
205 at a later date, regardless of the date that compensation is
206 paid to the viator. The agreement must establish the terms under
207 which the viatical settlement provider will pay compensation or
208 anything of value, which compensation or value is less than the
209 expected death benefit of the insurance policy or certificate,
210 in return for the viator's assignment, transfer, sale, devise,
211 or bequest of the death benefit or ownership of all or a portion
212 of the insurance policy or certificate of insurance to the
213 viatical settlement provider. The term also includes the



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214 transfer for compensation or value of an ownership or a
215 beneficial interest in a trust or other entity that owns such
216 policy if the trust or other entity was formed or used for the
217 principal purpose of acquiring one or more life insurance
218 contracts that insure the life of a person residing in this
219 state, and ~~A viatical settlement contract also includes a~~
220 ~~contract for a loan or other financial transaction secured~~
221 ~~primarily by an individual or group life insurance policy. The~~
222 ~~term does not include, other than a~~ policy loan by a life
223 insurance company pursuant to the terms of the life insurance
224 contract or accelerated death provisions contained in a life
225 insurance policy, whether issued with the original policy or as
226 a rider, or a loan secured by the cash surrender value of a
227 policy as determined by the policy issuer and the life insurance
228 policy terms, or a loan or advance from the issuer of the policy
229 to the policyowner.

230 (14) ~~(11)~~ "Viatical settlement investment" has the same
231 meaning as specified in s. 517.021.

232 (15) ~~(12)~~ "Viatical settlement provider" means a person who,
233 in this state, from this state, or with a resident of this
234 state, effectuates a viatical settlement contract. The term does
235 not include:

236 (a) A ~~Any~~ bank, savings bank, savings and loan association,
237 or credit union, ~~or other licensed lending institution~~ that
238 takes an assignment of a life insurance policy as collateral for
239 a loan.

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



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

247 (d) A trust that meets the definition of a "related
248 provider trust."

249 (e) A viator in this state.

250 (f) A financing entity.

251 (16) ~~(13)~~ "Viaticated policy" means a life insurance policy,
252 or a certificate under a group policy, which is the subject of a
253 viatical settlement contract.

254 (17) ~~(14)~~ "Viator" means the owner of a life insurance
255 policy or a certificateholder under a group policy, which policy
256 is not a previously viaticated policy, who enters or seeks to
257 enter into a viatical settlement contract. This term does not
258 include a viatical settlement provider, or a ~~any~~ person
259 acquiring a policy or interest in a policy from a viatical
260 settlement provider, or ~~nor does it include~~ an independent
261 third-party trustee or escrow agent.

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

265 626.9913 Viatical settlement provider license continuance;
266 annual report; fees; deposit.—

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

271 (b) In addition to any other requirements, the annual



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272 statement must specify:

273 1. The total number of unsettled viatical settlement
274 contracts and corresponding total amount due to viators under
275 viatical settlement contracts that have been signed by the
276 viator but have not been settled as of December 31 of the
277 preceding calendar year, categorized by the number of days since
278 the viator signed the contract for transactions regulated by
279 this state.

280 2. For each of the most recent 5 years, the total number of
281 policies purchased, total gross amount paid for policies
282 purchased, total commissions or compensation paid for policies
283 purchased, and total face value of policies purchased, allocated
284 by state, territory, and jurisdiction.

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

288 (c) After ~~December 31, 2007,~~ The annual statement shall
289 include an annual audited financial statement of the viatical
290 settlement provider prepared in accordance with generally
291 accepted accounting principles by an independent certified
292 public accountant covering a 12-month period ending on a day
293 occurring within ~~falling during~~ the last 6 months of the
294 preceding calendar year. If the audited financial statement has
295 not been completed, however, the licensee shall include in its
296 annual statement an unaudited financial statement for the
297 preceding calendar year and an affidavit from an officer of the
298 licensee stating that the audit has not been completed. In this
299 event, the licensee shall submit the audited statement on or
300 before June 1. The annual statement, due on or before March 1



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301 each year, shall also provide the office with a report of all
302 life expectancy providers who have provided life expectancies
303 directly or indirectly to the viatical settlement provider for
304 use in connection with a viatical settlement contract or a
305 viatical settlement investment. A viatical settlement provider
306 shall include in all statements filed with the office all
307 information requested by the office regarding a related provider
308 trust established by the viatical settlement provider. The
309 office may require more frequent reporting. Failure to timely
310 file the annual statement or the audited financial statement or
311 to timely pay the license fee is grounds for immediate
312 suspension of the license. The commission may by rule require
313 all or part of the statements or filings required under this
314 section to be submitted by electronic means in a computer-
315 readable form compatible with the electronic data format
316 specified by the commission.

317 (3) To ensure the faithful performance of its obligations
318 to its viators in the event of insolvency or the loss of its
319 license, a viatical settlement provider licensee must deposit
320 and maintain deposited in trust with the department securities
321 eligible for deposit under s. 625.52, having at all times a
322 value of not less than \$250,000 ~~\$100,000; however, a viatical~~
323 ~~settlement provider licensed in this state prior to June 1,~~
324 ~~2004, which has deposited and maintains continuously deposited~~
325 ~~in trust with the department securities in the amount of \$25,000~~
326 ~~and which posted and maintains continuously posted a security~~
327 ~~bond acceptable to the department in the amount of \$75,000, has~~
328 ~~until June 1, 2005, to comply with the requirements of this~~
329 ~~subsection.~~



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330 (6) The commission may adopt rules to implement this
331 section.

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

334 626.9914 Suspension, revocation, denial, or nonrenewal of
335 viatical settlement provider license; grounds; administrative
336 fine.-

337 (1) The office shall suspend, revoke, deny, or refuse to
338 renew the license of any viatical settlement provider if the
339 office finds that the licensee has committed any of the
340 following acts:

341 (a) Has made a misrepresentation in the application for the
342 license.†

343 (b) Has engaged in fraudulent or dishonest practices, or
344 otherwise has been shown to be untrustworthy or incompetent to
345 act as a viatical settlement provider.†

346 (c) Demonstrates a pattern of unreasonable payments to
347 viators.†

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

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

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

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

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



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

362 (j) No longer meets the requirements for initial
363 licensure.~~.~~~~or~~

364 (k) Obtains or utilizes life expectancies from life
365 expectancy providers who are not registered with the office
366 pursuant to this act.

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

368 (2) The office may, in lieu of or in addition to any
369 suspension or revocation, assess an administrative fine not to
370 exceed \$10,000 ~~\$2,500~~ for each nonwillful violation or \$25,000
371 ~~\$10,000~~ for each willful violation by a viatical settlement
372 provider licensee. The office may also place a viatical
373 settlement provider licensee on probation for a period not to
374 exceed 2 years.

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

377 626.99175 Life expectancy providers; registration required;
378 denial, suspension, revocation.—

379 (1) ~~After July 1, 2006,~~ A person may not perform the
380 functions of a life expectancy provider without first having
381 registered as a life expectancy provider, ~~except as provided in~~
382 ~~subsection (6).~~

383 Section 5. Section 626.99185, Florida Statutes, is created
384 to read:

385 626.99185 Disclosures to viator of disbursement.—

386 (1) Before or concurrently with a viator's execution of a
387 viatical settlement contract, the viatical settlement provider



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388 shall provide to the viator, in duplicate, a disclosure
389 statement in legible written form disclosing:

390 (a) The name of each viatical settlement broker who
391 receives or will receive compensation and the amount of each
392 broker's compensation related to that transaction. For the
393 purpose of this section, compensation includes anything of value
394 paid or given by or at the direction of a viatical settlement
395 provider or person acquiring an interest in one or more life
396 insurance policies to a viatical settlement broker in connection
397 with the viatical settlement contract.

398 (b) A complete reconciliation of the gross offer or bid by
399 the viatical settlement provider to the net amount of proceeds
400 or value to be received by the viator related to that
401 transaction. As used in this section, the term "gross offer" or
402 "bid" means the total amount or value offered by the viatical
403 settlement provider for the purchase of an interest in one or
404 more life insurance policies, including commissions,
405 compensation, or other proceeds or value being deducted from the
406 gross offer or bid.

407 (2) The viator shall sign and date the disclosure statement
408 before or concurrently with the viator's execution of a viatical
409 settlement contract, with the viator retaining the duplicate
410 copy of the disclosure statement.

411 (3) If a viatical settlement contract is entered into and
412 the contract is subsequently amended or if there is a change in
413 the viatical settlement provider's gross offer or bid amount, a
414 change in the net amount of proceeds or value to be received by
415 the viator, or a change in the information provided in the
416 disclosure statement to the viator, the viatical settlement



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417 provider shall provide, in duplicate, an amended disclosure
418 statement to the viator containing the information in subsection
419 (1). The viator shall sign and date the amended disclosure
420 statement, with the viator retaining the duplicate copy of the
421 amended disclosure statement.

422 (4) Before a viatical settlement provider's execution of a
423 viatical settlement contract or an amendment to such contract,
424 the viatical settlement provider must obtain the signed and
425 dated disclosure statement and any amended disclosure statement
426 required by this section. In transactions for which a broker is
427 not used, the viatical settlement provider must obtain the
428 signed and dated disclosure statement from the viator.

429 (5) The viatical settlement provider shall maintain the
430 documentation required by this section pursuant to s.
431 626.9922(2) and shall make such documentation available to the
432 office at any time for copying and inspection upon reasonable
433 notice by the office to the viatical settlement provider.

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

436 626.9924 Viatical settlement contracts; procedures;
437 rescission.—

438 (7) At any time during the contestable period, within 20
439 days after a viator executes documents necessary to transfer
440 rights under an insurance policy or within 20 days of any
441 agreement, option, promise, or any other form of understanding,
442 express or implied, to viaticate the policy, the provider must
443 give notice to the insurer of the policy that the policy has or
444 will become a viaticated policy. The notice must be accompanied
445 by the documents required by ss. 626.99276 and 626.99287 ~~s.~~



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446 ~~626.99287(5)(a)~~ in their entirety.

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

449 626.99245 Conflict of regulation of viaticals.—

450 (2) This section does not affect the requirement of ss.
451 626.9911(15)~~(12)~~ and 626.9912(1) that a viatical settlement
452 provider doing business from this state must obtain a viatical
453 settlement license from the office. As used in this subsection,
454 the term "doing business from this state" includes effectuating
455 viatical settlement contracts from offices in this state,
456 regardless of the state of residence of the viator.

457 Section 8. Section 626.99273, Florida Statutes, is created
458 to read:

459 626.99273 Prohibited practices and conflicts of interest.—

460 (1) With respect to a viatical settlement contract or an
461 insurance policy, a viatical settlement broker may not knowingly
462 solicit an offer from, effectuate a viatical settlement with, or
463 make a sale to any viatical settlement provider, financing
464 entity, or related provider trust that is controlling,
465 controlled by, or under common control with such viatical
466 settlement broker.

467 (2) With respect to a viatical settlement contract or an
468 insurance policy, a viatical settlement provider may not
469 knowingly enter into a viatical settlement contract with a
470 viator if, in connection with such viatical settlement contract,
471 anything of value will be paid to a viatical settlement broker
472 that is controlling, controlled by, or under common control with
473 such viatical settlement provider, financing entity, or related
474 provider trust that is involved in such viatical settlement



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475 contract.

476 (3) A viatical settlement provider may not enter into a
477 viatical settlement contract unless the viatical settlement
478 promotional, advertising, and marketing materials, as may be
479 prescribed by rule, have been filed with the office. Such
480 materials may not expressly indicate, or include any reference
481 that would cause a viator to reasonably believe, that the life
482 insurance is free for any period of time.

483 (4) A life insurance agent, insurer, viatical settlement
484 broker, or viatical settlement provider may not make a statement
485 or representation to an applicant or policyholder in connection
486 with the sale of a life insurance policy to the effect that the
487 insurance is free or without cost to the policyholder for any
488 period of time.

489 (5) The commission may adopt rules to implement this
490 section.

491 Section 9. Section 626.99275, Florida Statutes, is amended
492 to read:

493 626.99275 Prohibited practices; penalties.-

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

495 (a) ~~To~~ Knowingly enter into, broker, or otherwise deal in a
496 viatical settlement contract the subject of which is a life
497 insurance policy, knowing that the policy was obtained by
498 presenting materially false information concerning any fact
499 material to the policy or by concealing, for the purpose of
500 misleading another, information concerning any fact material to
501 the policy, where the viator or the viator's agent intended to
502 defraud the policy's issuer.

503 (b) ~~To~~ Knowingly or with the intent to defraud, for the



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504 purpose of depriving another of property or for pecuniary gain,
505 issue or use a pattern of false, misleading, or deceptive life
506 expectancies.

507 (c) ~~¶~~ Knowingly engage in any transaction, practice, or
508 course of business intending thereby to avoid the notice
509 requirements of s. 626.9924(7).

510 (d) ~~¶~~ Knowingly or intentionally facilitate the change of
511 state of residency of a viator to avoid the provisions of this
512 chapter.

513 (e) Knowingly enter into a viatical settlement contract
514 before the application for or issuance of a life insurance
515 policy that is the subject of a viatical settlement contract or
516 during the 5-year period commencing on the date of issuance of
517 the policy or certificate, unless the viator provides a sworn
518 affidavit and accompanying documentation in accordance with s.
519 626.9987.

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

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

524 (2) A person who violates any provision of this section
525 commits:

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

529 (b) A felony of the second degree, punishable as provided
530 in s. 775.082, s. 775.083, or s. 775.084, if the insurance
531 policy involved is valued at \$20,000 or more, but less than
532 \$100,000.



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

536 Section 10. Section 626.99276, Florida Statutes, is created
537 to read:

538 626.99276 Notification to insurer required.-

539 (1) A copy of the sworn affidavit and the documentation
540 required in s. 626.99287 must be submitted to the insurer if the
541 viatical settlement provider or other party entering into a
542 viatical settlement contract with a viator submits a request to
543 the insurer for verification of coverage or if the viatical
544 settlement provider submits a request to transfer the policy or
545 certificate to the provider. If the request is made by a
546 viatical settlement provider, the copy shall be accompanied by a
547 sworn affidavit from the viatical settlement provider affirming
548 that the copy is a true and correct copy of the documentation
549 received by the provider.

550 (2) An insurer may not require, as a condition of
551 responding to a request for verification of coverage or
552 effecting the transfer of a policy pursuant to a viatical
553 settlement contract, that the viator, insured, viatical
554 settlement provider, or viatical settlement broker sign any
555 disclosures, consent form, waiver form, or other form that has
556 not been approved by the office for use in connection with
557 viatical settlement contracts in this state.

558 (3) Upon receipt of a properly completed request for change
559 of ownership or beneficiary of a policy, the insurer shall
560 respond in writing within 30 calendar days confirming that the
561 change has been effectuated or specifying the reasons why the



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562 requested change cannot be processed. The insurer may not
563 unreasonably delay effectuating a change of ownership or
564 beneficiary and may not otherwise seek to interfere with any
565 viatical settlement contract lawfully entered into in this
566 state.

567 Section 11. Section 626.99278, Florida Statutes, is amended
568 to read:

569 626.99278 Viatical provider anti-fraud plan.—

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

574 (a) ~~(1)~~ A description of the procedures for detecting and
575 investigating possible fraudulent acts and procedures for
576 resolving material inconsistencies between medical records and
577 insurance applications.

578 (b) ~~(2)~~ A description of the procedures for the mandatory
579 reporting of possible fraudulent insurance acts and prohibited
580 practices specified ~~set forth~~ in s. 626.99275 to the Division of
581 Insurance Fraud ~~of the department~~.

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

584 (d) ~~(4)~~ A written description or chart outlining the
585 organizational arrangement of the anti-fraud personnel who are
586 responsible for the investigation and reporting of possible
587 fraudulent insurance acts and for the investigation of
588 unresolved material inconsistencies between medical records and
589 insurance applications.

590 (e) ~~(5)~~ For viatical settlement providers, a description of



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591 the procedures used to perform initial and continuing review of
592 the accuracy of life expectancies used in connection with a
593 viatical settlement contract or viatical settlement investment.

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

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

598 (b) Documentation pertaining to resolved and unresolved
599 material inconsistencies between medical records and insurance
600 applications.

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

604 Section 12. Section 626.99287, Florida Statutes, is
605 amended, to read:

606 626.99287 Contestability of viaticated policies.—Except as
607 hereinafter provided, if a viatical settlement contract is
608 entered into during ~~within~~ the 5-year ~~2-year~~ period commencing
609 on ~~with~~ the date of issuance of the insurance policy or
610 certificate to be acquired, the viatical settlement contract is
611 void and unenforceable by either party. Notwithstanding this
612 limitation, such a viatical settlement contract is not void and
613 unenforceable if the viator provides a sworn affidavit and
614 accompanying documentation that certifies to the viatical
615 settlement provider that one or more of the following conditions
616 were met during the 5-year period:

617 (1) The policy was issued upon the owner's exercise of
618 conversion rights arising out of a group or term policy, if the
619 total time covered under the prior policy is at least 60 months.



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620 The time covered under a group policy shall be calculated
621 without regard to any change in insurance carriers, provided the
622 coverage has been continuous and under the same group
623 sponsorship;

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

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

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

629 (5) The viator certifies by producing independent evidence
630 to the viatical settlement provider that one or more of the
631 following conditions were have been met during within the 5-year
632 2-year period:

633 (a)~~1.~~ The viator or insured is terminally or chronically
634 ill ~~diagnosed with an illness or condition that is either:~~

635 ~~a. Catastrophic or life threatening; or~~

636 ~~b. Requires a course of treatment for a period of at least~~
637 ~~3 years of long-term care or home health care; and~~

638 ~~2.~~ the condition was not known to the insured at the time
639 the life insurance contract was entered into;~~;~~

640 (b) The viator's spouse dies;

641 (c) The viator divorces his or her spouse;

642 (d) The viator retires from full-time employment;

643 (e) The viator becomes physically or mentally disabled and
644 a physician determines that the disability prevents the viator
645 from maintaining full-time employment;

646 (f) The owner of the policy was the insured's employer at
647 the time the policy or certificate was issued and the employment
648 relationship terminated;



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649 (g) A final order, judgment, or decree is entered by a
650 court of competent jurisdiction, on the application of a
651 creditor of the viator, adjudicating the viator bankrupt or
652 insolvent, or approving a petition seeking reorganization of the
653 viator or appointing a receiver, trustee, or liquidator to all
654 or a substantial part of the viator's assets; or

655 (h) The viator experiences a significant decrease in income
656 which is unexpected by the viator and which impairs his or her
657 reasonable ability to pay the policy premium.

658 (6) The viator entered into a viatical settlement contract
659 more than 2 years after the policy's issuance date and, with
660 respect to the policy, at all times before such date each of the
661 following conditions were met:

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

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

671 (c) The insured and the policy were not evaluated for
672 settlement.

673
674 ~~If the viatical settlement provider submits to the insurer a~~
675 ~~copy of the viator's or owner's certification described above,~~
676 ~~then the provider submits a request to the insurer to effect the~~
677 ~~transfer of the policy or certificate to the viatical settlement~~



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678 ~~provider, the viatical settlement agreement shall not be void or~~
679 ~~unenforceable by operation of this section. The insurer shall~~
680 ~~timely respond to such request. Nothing in this section shall~~
681 ~~prohibit an insurer from exercising its right during the~~
682 ~~contestability period to contest the validity of any policy on~~
683 ~~grounds of fraud.~~

684 Section 13. Section 626.99289, Florida Statutes, is created
685 to read:

686 626.99289 Void and unenforceable contracts, agreements,
687 arrangements, and transactions.-A contract, agreement,
688 arrangement, or transaction, including, but not limited to, a
689 financing agreement or any other arrangement or understanding
690 entered into, whether written or verbal, for the furtherance or
691 aid of a stranger-originated life insurance practice is void and
692 unenforceable.

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

694
695 ===== T I T L E A M E N D M E N T =====

696 And the title is amended as follows:

697 Delete everything before the enacting clause
698 and insert:

699 A bill to be entitled
700 An act relating to viatical settlements; amending s.
701 626.9911, F.S.; revising definitions; defining the
702 terms "business of viatical settlements," "fraudulent
703 viatical settlement act," and "stranger-originated
704 life insurance practice"; amending s. 626.9913, F.S.;
705 requiring additional information in an annual
706 statement filed by viatical settlement provider



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707 licenses; revising deposit requirements for viatical
708 settlement provider licensees; deleting an obsolete
709 provision regarding a deposit requirement; authorizing
710 the Financial Services Commission to adopt rules;
711 amending s. 626.9914, F.S.; adding an act that
712 warrants the imposition of administrative penalties
713 against viatical settlement provider licensees;
714 increasing the amount of administrative fines that may
715 be imposed by the Office of Insurance Regulation
716 against licensees for certain violations; amending s.
717 626.99175, F.S.; deleting an obsolete provision;
718 deleting an exception from registration requirements
719 for life expectancy providers; creating s. 626.99185,
720 F.S.; requiring viatical settlement providers to
721 provide viators with a disclosure statement before or
722 concurrently with a viator's execution of a viatical
723 settlement contract; providing requirements and
724 procedures for such disclosure statements; amending s.
725 626.9924, F.S.; correcting cross-references relating
726 to a requirement to provide specified documents with a
727 notice that a policy has or will become a viaticated
728 policy; amending s. 626.99245, F.S.; conforming a
729 cross-reference; creating s. 626.99273, F.S.;
730 prohibiting certain practices and conflicts of
731 interest relating to viatical settlement contracts or
732 insurance policies; requiring a viatical settlement
733 provider to file certain promotional, advertising, and
734 marketing materials with the office before entering
735 into viatical settlement contracts; prohibiting



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736 certain references relating to the cost of life
737 insurance policies in such materials and other
738 specified statements and representations; authorizing
739 the commission to adopt rules; amending s. 626.99275,
740 F.S.; prohibiting a person from entering into a
741 viatical settlement contract before a specified date
742 except under specified circumstances, from issuing,
743 soliciting, marketing, or otherwise promoting the
744 purchase of a policy under certain circumstances, and
745 from engaging in a fraudulent viatical settlement act;
746 providing criminal penalties for a violation of such
747 prohibitions; creating s. 626.99276, F.S.; requiring
748 specified affidavits and other documentation to be
749 provided to an insurer for requests to verify coverage
750 and to transfer a policy or certificate to a viatical
751 settlement provider; prohibiting insurers from
752 requiring certain forms that have not been approved by
753 the office to be signed as a condition of responding
754 to such requests; requiring insurers to respond in
755 writing during a specified period to properly
756 completed requests to change the ownership or
757 beneficiary of a policy; amending s. 626.99278, F.S.;;
758 providing requirements for licensed viatical
759 settlement providers to maintain specified
760 documentation relating to anti-fraud plans and
761 procedures, material inconsistencies between medical
762 records and insurance applications, and reporting of
763 specified fraudulent acts and prohibited practices;
764 amending s. 626.99287, F.S.; revising the period



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765 during which certain viatical settlement contracts are
766 void and unenforceable; revising exceptions to such
767 contracts being void and unenforceable; creating s.
768 626.99289, F.S.; providing that certain contracts,
769 agreements, arrangements, and transactions relating to
770 stranger-originated life insurance practices are void
771 and unenforceable; providing an effective date.