

By Senator Legg

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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; amending s. 626.9914, F.S.;  
11          adding an act that warrants the imposition of  
12          administrative penalties against viatical settlement  
13          provider licensees; increasing the amount of  
14          administrative fines that may be imposed by the Office  
15          of Insurance Regulation against licensees for certain  
16          violations; amending s. 626.99175, F.S.; deleting an  
17          obsolete provision; deleting an exception from  
18          registration requirements for life expectancy  
19          providers; creating s. 626.99185, F.S.; requiring  
20          viatical settlement providers to provide viators with  
21          a disclosure statement before or concurrently with a  
22          viator's execution of a viatical settlement contract;  
23          providing requirements and procedures for such  
24          disclosure statements; amending s. 626.9924, F.S.;  
25          deleting a requirement to provide specified documents  
26          with a notice that a policy has or will become a  
27          viaticated policy; amending s. 626.99245, F.S.;  
28          conforming a cross-reference; creating s. 626.99273,  
29          F.S.; prohibiting certain practices and conflicts of

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30 interest relating to viatical settlement contracts or  
31 insurance policies; requiring a viatical settlement  
32 provider to file certain promotional, advertising, and  
33 marketing materials with the office before entering  
34 into viatical settlement contracts; prohibiting  
35 certain references relating to the cost of life  
36 insurance policies in such materials and other  
37 specified statements and representations; amending s.  
38 626.99275, F.S.; prohibiting a person from entering  
39 into a viatical settlement contract before a specified  
40 date except under specified circumstances, from  
41 issuing, soliciting, marketing, or otherwise promoting  
42 the purchase of a policy under certain circumstances,  
43 and from engaging in a fraudulent viatical settlement  
44 act; providing criminal penalties for a violation of  
45 such prohibitions; creating s. 626.99276, F.S.;

46 requiring specified affidavits and other documentation  
47 to be provided to an insurer for requests to verify  
48 coverage and to transfer a policy or certificate to a  
49 viatical settlement provider; prohibiting insurers  
50 from requiring certain forms that have not been  
51 approved by the office to be signed as a condition of  
52 responding to such requests; requiring insurers to  
53 respond in writing within a specified period to  
54 properly completed requests to change the ownership or  
55 beneficiary of a policy; amending s. 626.99278, F.S.;

56 providing requirements for licensed viatical  
57 settlement providers to maintain specified  
58 documentation relating to anti-fraud plans and

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59 procedures, material inconsistencies between medical  
60 records and insurance applications, and reporting of  
61 specified fraudulent acts and prohibited practices;  
62 repealing s. 626.99287, F.S., relating to the  
63 contestability of viaticated policies; creating s.  
64 626.99289, F.S.; providing that certain contracts,  
65 agreements, arrangements, and transactions relating to  
66 stranger-originated life insurance practices are void  
67 and unenforceable; providing an effective date.

68

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

70

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

73 626.9911 Definitions.—As used in this act, the term:

74 (1) “Business of viatical settlements” means an activity  
75 involved in the offering, soliciting, negotiating, procuring,  
76 effectuating, purchasing, investing, monitoring, tracking,  
77 underwriting, selling, transferring, assigning, pledging, or  
78 hypothecating of, or acquiring in other manner, an interest in a  
79 life insurance policy by means of a viatical settlement  
80 contract.

81 (2) “Financing entity” means an underwriter, placement  
82 agent, lender, purchaser of securities, or purchaser of a policy  
83 or certificate from a viatical settlement provider, credit  
84 enhancer, or any entity that has direct ownership in a policy or  
85 certificate that is the subject of a viatical settlement  
86 contract, but whose principal activity related to the  
87 transaction is providing funds or credit enhancement to effect

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88 the viatical settlement or the purchase of one or more  
89 viaticated policies and who has an agreement in writing with one  
90 or more licensed viatical settlement providers to finance the  
91 acquisition of viatical settlement contracts. The term does not  
92 include a nonaccredited investor or other natural person. A  
93 financing entity may not enter into a viatical settlement  
94 contract.

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

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

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

106 2. The underwriting of a viatical settlement contract or an  
107 insurance policy;

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

110 4. Premiums paid on an insurance policy;

111 5. Payments and changes in ownership or beneficiary made in  
112 accordance with the terms of a viatical settlement contract or  
113 an insurance policy;

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

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

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

119 9. A financing transaction.

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

122 (c) Engaging in a stranger-originated life insurance  
123 practice.

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

128 (e) Perpetuating a fraud or preventing the detection of a  
129 fraud by:

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

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

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

138 4. Filing with the office or the equivalent chief insurance  
139 regulatory official of another jurisdiction a document that  
140 contains false information or conceals information about a  
141 material fact from the office or other regulatory official.

142 (f) Embezzlement, theft, misappropriation, or conversion of  
143 moneys, funds, premiums, credits, or other property of a  
144 viatical settlement provider, insurer, insured, viator,  
145 insurance policyowner, or other person engaged in the business

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146 of viatical settlements or insurance.

147 (g) Recklessly entering into, negotiating, brokering, or  
148 otherwise dealing in a viatical settlement contract, the subject  
149 of which is a life insurance policy that was obtained based on  
150 information that was falsified or concealed for the purpose of  
151 defrauding the policy's issuer, viatical settlement provider, or  
152 viator. As used in this paragraph, the term "recklessly" means  
153 acting or failing to act in conscious disregard for the relevant  
154 facts or risks, and which disregard involves a gross deviation  
155 from acceptable standards of conduct.

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

158 (i) Facilitating or causing the creation of a trust with a  
159 non-Florida situs or other nonresident entity for the purpose of  
160 owning a life insurance policy covering a Florida resident to  
161 avoid the provisions of this act;

162 (j) Facilitating or causing the transfer of the ownership  
163 of an insurance policy covering a Florida resident to a trust  
164 with a non-Florida situs or other nonresident entity to avoid  
165 the provisions of this act.

166 (k) Applying for or obtaining a loan that is secured  
167 directly or indirectly by an interest in a life insurance  
168 policy.

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

170 (m) Attempting to commit, assisting, aiding, or abetting in  
171 the commission of or conspiring to commit an act or omission  
172 specified in this subsection.

173 (4)~~(2)~~ "Independent third-party trustee or escrow agent"  
174 means an attorney, certified public accountant, financial

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175 institution, or other person providing escrow services under the  
176 authority of a regulatory body. The term does not include any  
177 person associated, affiliated, or under common control with a  
178 viatical settlement provider or viatical settlement broker.

179 (5)~~(3)~~ "Life expectancy" means an opinion or evaluation as  
180 to how long a particular person is to live, or relating to such  
181 person's expected demise.

182 (6)~~(4)~~ "Life expectancy provider" means a person who  
183 determines, or holds himself or herself out as determining, life  
184 expectancies or mortality ratings used to determine life  
185 expectancies under any of the following circumstances:

186 (a) On behalf of a viatical settlement provider, viatical  
187 settlement broker, life agent, or person engaged in the business  
188 of viatical settlements.~~.~~

189 (b) In connection with a viatical settlement investment,  
190 pursuant to s. 517.021(24).~~.~~~~or~~

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

193 (7)~~(5)~~ "Person" has the meaning specified in s. 1.01.

194 (8)~~(6)~~ "Related form" means any form, created by or on  
195 behalf of a licensee, which a viator or insured is required to  
196 sign or initial. The forms include, but are not limited to, a  
197 power of attorney, a release of medical information form, a  
198 suitability questionnaire, a disclosure document, or any  
199 addendum, schedule, or amendment to a viatical settlement  
200 contract considered necessary by a provider to effectuate a  
201 viatical settlement transaction.

202 (9)~~(7)~~ "Related provider trust" means a titling trust or  
203 other trust established by a licensed viatical settlement

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

226 (10) ~~(8)~~ "Special purpose entity" means an entity  
227 established by a licensed viatical settlement provider or by a  
228 financing entity, which may be a corporation, partnership,  
229 trust, limited liability company, or other similar entity formed  
230 solely to provide, either directly or indirectly, access to  
231 institutional capital markets to a viatical settlement provider  
232 or financing entity. A special purpose entity may not obtain

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233 capital from any natural person or entity with less than \$50  
234 million in assets and may not enter into a viatical settlement  
235 contract.

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

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

248 (b) The creation of a trust that has the appearance of an  
249 insurable interest to initiate policies for investors, which  
250 violates insurable interest laws and the prohibition against  
251 wagering on life.

252 (12)~~(9)~~ "Viatical settlement broker" means a person who, on  
253 behalf of a viator and for a fee, commission, or other valuable  
254 consideration, offers or attempts to negotiate viatical  
255 settlement contracts between a viator resident in this state and  
256 one or more viatical settlement providers. Notwithstanding the  
257 manner in which the viatical settlement broker is compensated, a  
258 viatical settlement broker is deemed to represent only the  
259 viator and owes a fiduciary duty to the viator to act according  
260 to the viator's instructions and in the best interest of the  
261 viator. The term does not include an attorney, licensed

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262 Certified Public Accountant, or investment adviser lawfully  
263 registered under chapter 517, who is retained to represent the  
264 viator and whose compensation is paid directly by or at the  
265 direction and on behalf of the viator.

266 (13)~~(10)~~ "Viatical settlement contract" means a written  
267 agreement entered into between a viatical settlement provider,  
268 or its related provider trust, and a viator. The viatical  
269 settlement contract includes an agreement to transfer ownership  
270 or change the beneficiary designation of a life insurance policy  
271 at a later date, regardless of the date that compensation is  
272 paid to the viator. The agreement must establish the terms under  
273 which the viatical settlement provider will pay compensation or  
274 anything of value, which compensation or value is less than the  
275 expected death benefit of the insurance policy or certificate,  
276 in return for the viator's assignment, transfer, sale, devise,  
277 or bequest of the death benefit or ownership of all or a portion  
278 of the insurance policy or certificate of insurance to the  
279 viatical settlement provider. The term also includes the  
280 transfer for compensation or value of an ownership or a  
281 beneficial interest in a trust or other entity that owns such  
282 policy if the trust or other entity was formed or used for the  
283 principal purpose of acquiring one or more life insurance  
284 contracts that insure the life of a person residing in this  
285 state, and ~~A viatical settlement contract also includes a~~  
286 contract for a loan or other financial transaction secured  
287 primarily by an individual or group life insurance policy. The  
288 term does not include, other than a policy loan by a life  
289 insurance company pursuant to the terms of the life insurance  
290 contract or accelerated death provisions contained in a life

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291 insurance policy, whether issued with the original policy or as  
292 a rider, or a loan secured by the cash surrender value of a  
293 policy as determined by the policy issuer and the life insurance  
294 policy terms, or a loan or advance from the issuer of the policy  
295 to the policyowner.

296 (14)~~(11)~~ "Viatical settlement investment" has the same  
297 meaning as specified in s. 517.021.

298 (15)~~(12)~~ "Viatical settlement provider" means a person who,  
299 in this state, from this state, or with a resident of this  
300 state, effectuates a viatical settlement contract. The term does  
301 not include:

302 (a) A ~~Any~~ bank, savings bank, savings and loan association,  
303 or credit union, ~~or other licensed lending institution~~ that  
304 takes an assignment of a life insurance policy as collateral for  
305 a loan.

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

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

313 (d) A trust that meets the definition of a "related  
314 provider trust."

315 (e) A viator in this state.

316 (f) A financing entity.

317 (16)~~(13)~~ "Viaticated policy" means a life insurance policy,  
318 or a certificate under a group policy, which is the subject of a  
319 viatical settlement contract.

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320        ~~(17)(14)~~ "Viator" means the owner of a life insurance  
321 policy or a certificateholder under a group policy, which policy  
322 is not a previously viaticated policy, who enters or seeks to  
323 enter into a viatical settlement contract. This term does not  
324 include a viatical settlement provider, ~~or a~~ any person  
325 acquiring a policy or interest in a policy from a viatical  
326 settlement provider, ~~or nor does it include~~ an independent  
327 third-party trustee or escrow agent.

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

330        626.9913 Viatical settlement provider license continuance;  
331 annual report; fees; deposit.—

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

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

338        1. The total number of unsettled viatical settlement  
339 contracts and corresponding total amount due to viators under  
340 viatical settlement contracts that have been signed by the  
341 viator but have not been settled as of December 31 of the  
342 preceding calendar year, categorized by the number of days since  
343 the viator signed the contract for transactions regulated by  
344 this state.

345        2. For the most recent 5 years, the total number of  
346 policies purchased, total gross amount paid for policies  
347 purchased, total commissions or compensation paid for policies  
348 purchased, and total face value of policies purchased, allocated

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349 by state, territory, and jurisdiction.

350 3. The total amount of proceeds or compensation paid to  
351 policyowners, allocated by state, territory, and jurisdiction.

352 (c) ~~After December 31, 2007,~~ The annual statement shall  
353 include an annual audited financial statement of the viatical  
354 settlement provider prepared in accordance with generally  
355 accepted accounting principles by an independent certified  
356 public accountant covering a 12-month period ending on a day  
357 occurring within ~~falling during~~ the last 6 months of the  
358 preceding calendar year. If the audited financial statement has  
359 not been completed, however, the licensee shall include in its  
360 annual statement an unaudited financial statement for the  
361 preceding calendar year and an affidavit from an officer of the  
362 licensee stating that the audit has not been completed. In this  
363 event, the licensee shall submit the audited statement on or  
364 before June 1. The annual statement, due on or before March 1  
365 each year, shall also provide the office with a report of all  
366 life expectancy providers who have provided life expectancies  
367 directly or indirectly to the viatical settlement provider for  
368 use in connection with a viatical settlement contract or a  
369 viatical settlement investment. A viatical settlement provider  
370 shall include in all statements filed with the office all  
371 information requested by the office regarding a related provider  
372 trust established by the viatical settlement provider. The  
373 office may require more frequent reporting. Failure to timely  
374 file the annual statement or the audited financial statement or  
375 to timely pay the license fee is grounds for immediate  
376 suspension of the license. The commission may by rule require  
377 all or part of the statements or filings required under this

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378 section to be submitted by electronic means in a computer-  
379 readable form compatible with the electronic data format  
380 specified by the commission.

381 (3) To ensure the faithful performance of its obligations  
382 to its viators in the event of insolvency or the loss of its  
383 license, a viatical settlement provider licensee must deposit  
384 and maintain deposited in trust with the department securities  
385 eligible for deposit under s. 625.52, having at all times a  
386 value of not less than \$100,000; ~~however, a viatical settlement~~  
387 ~~provider licensed in this state prior to June 1, 2004, which has~~  
388 ~~deposited and maintains continuously deposited in trust with the~~  
389 ~~department securities in the amount of \$25,000 and which posted~~  
390 ~~and maintains continuously posted a security bond acceptable to~~  
391 ~~the department in the amount of \$75,000, has until June 1, 2005,~~  
392 ~~to comply with the requirements of this subsection.~~

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

395 626.9914 Suspension, revocation, denial, or nonrenewal of  
396 viatical settlement provider license; grounds; administrative  
397 fine.—

398 (1) The office shall suspend, revoke, deny, or refuse to  
399 renew the license of any viatical settlement provider if the  
400 office finds that the licensee has committed any of the  
401 following acts:

402 (a) Has made a misrepresentation in the application for the  
403 license.~~†~~

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

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407 (c) Demonstrates a pattern of unreasonable payments to  
408 viators.~~†~~

409 (d) Has been found guilty of, or has pleaded guilty or nolo  
410 contendere to, any felony, or a misdemeanor involving fraud or  
411 moral turpitude, regardless of whether a judgment of conviction  
412 has been entered by the court.~~†~~

413 (e) Has issued viatical settlement contracts that have not  
414 been approved pursuant to this act.~~†~~

415 (f) Has failed to honor contractual obligations related to  
416 the business of viatical settlement contracts.~~†~~

417 (g) Deals in bad faith with viators.~~†~~

418 (h) Has violated any provision of the insurance code or of  
419 this act.~~†~~

420 (i) Employs a ~~any~~ person who materially influences the  
421 licensee's conduct and who fails to meet the requirements of  
422 this act.~~†~~

423 (j) No longer meets the requirements for initial  
424 licensure.~~†~~ ~~or~~

425 (k) Obtains or utilizes life expectancies from life  
426 expectancy providers who are not registered with the office  
427 pursuant to this act.

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

429 (2) The office may, in lieu of or in addition to any  
430 suspension or revocation, assess an administrative fine not to  
431 exceed \$10,000 ~~\$2,500~~ for each nonwillful violation or \$25,000  
432 ~~\$10,000~~ for each willful violation by a viatical settlement  
433 provider licensee. The office may also place a viatical  
434 settlement provider licensee on probation for a period not to  
435 exceed 2 years.

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

438 626.99175 Life expectancy providers; registration required;  
439 denial, suspension, revocation.—

440 (1) ~~After July 1, 2006,~~ A person may not perform the  
441 functions of a life expectancy provider without first having  
442 registered as a life expectancy provider, ~~except as provided in~~  
443 ~~subsection (6).~~

444 Section 5. Section 626.99185, Florida Statutes, is created  
445 to read:

446 626.99185 Disclosures to viator of disbursement.—

447 (1) Before or concurrently with a viator's execution of a  
448 viatical settlement contract, the viatical settlement provider  
449 shall provide to the viator, in duplicate, a disclosure  
450 statement in legible written form disclosing:

451 (a) The name of each viatical settlement broker who  
452 receives or will receive compensation and the amount of each  
453 broker's compensation related to that transaction. For the  
454 purpose of this section, compensation includes anything of value  
455 paid or given by or at the direction of a viatical settlement  
456 provider or person acquiring an interest in one or more life  
457 insurance policies to a viatical settlement broker in connection  
458 with the viatical settlement contract.

459 (b) A complete reconciliation of the gross offer or bid by  
460 the viatical settlement provider to the net amount of proceeds  
461 or value to be received by the viator related to that  
462 transaction. As used in this section, the term "gross offer" or  
463 "bid" means the total amount or value offered by the viatical  
464 settlement provider for the purchase of an interest in one or

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465 more life insurance policies, including commissions,  
466 compensation, or other proceeds or value being deducted from the  
467 gross offer or bid.

468 (2) The viator shall sign and date the disclosure statement  
469 before or concurrently with the viator's execution of a viatical  
470 settlement contract, with the viator retaining the duplicate  
471 copy of the disclosure statement.

472 (3) If a viatical settlement contract is entered into and  
473 the contract is subsequently amended or if there is a change in  
474 the viatical settlement provider's gross offer or bid amount, a  
475 change in the net amount of proceeds or value to be received by  
476 the viator, or a change in the information provided in the  
477 disclosure statement to the viator, the viatical settlement  
478 provider shall provide, in duplicate, an amended disclosure  
479 statement to the viator containing the information in subsection  
480 (1). The viator shall sign and date the amended disclosure  
481 statement, with the viator retaining the duplicate copy of the  
482 amended disclosure statement.

483 (4) Before a viatical settlement provider's execution of a  
484 viatical settlement contract or an amendment to such contract,  
485 the viatical settlement provider must obtain the signed and  
486 dated disclosure statement and any amended disclosure statement  
487 required by this section. In transactions for which a broker is  
488 not used, the viatical settlement provider must obtain the  
489 signed and dated disclosure statement from the viator.

490 (5) The viatical settlement provider shall maintain the  
491 documentation required by this section pursuant to s.  
492 626.9922(2) and shall make such documentation available to the  
493 office at any time for copying and inspection upon reasonable

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494 notice by the office to the viatical settlement provider.

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

497 626.9924 Viatical settlement contracts; procedures;  
498 rescission.—

499 (7) At any time during the contestable period, within 20  
500 days after a viator executes documents necessary to transfer  
501 rights under an insurance policy or within 20 days of any  
502 agreement, option, promise, or any other form of understanding,  
503 express or implied, to viaticate the policy, the provider must  
504 give notice to the insurer of the policy that the policy has or  
505 will become a viaticated policy. ~~The notice must be accompanied~~  
506 ~~by the documents required by s. 626.99287(5)(a) in their~~  
507 ~~entirety.~~

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

510 626.99245 Conflict of regulation of viaticals.—

511 (2) This section does not affect the requirement of ss.  
512 626.9911(15) ~~(12)~~ and 626.9912(1) that a viatical settlement  
513 provider doing business from this state must obtain a viatical  
514 settlement license from the office. As used in this subsection,  
515 the term "doing business from this state" includes effectuating  
516 viatical settlement contracts from offices in this state,  
517 regardless of the state of residence of the viator.

518 Section 8. Section 626.99273, Florida Statutes, is created  
519 to read:

520 626.99273 Prohibited practices and conflicts of interest.—

521 (1) With respect to a viatical settlement contract or an  
522 insurance policy, a viatical settlement broker may not knowingly

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523 solicit an offer from, effectuate a viatical settlement with, or  
524 make a sale to any viatical settlement provider, financing  
525 entity, or related provider trust that is controlling,  
526 controlled by, or under common control with such viatical  
527 settlement broker.

528 (2) With respect to a viatical settlement contract or an  
529 insurance policy, a viatical settlement provider may not  
530 knowingly enter into a viatical settlement contract with a  
531 viator if, in connection with such viatical settlement contract,  
532 anything of value will be paid to a viatical settlement broker  
533 that is controlling, controlled by, or under common control with  
534 such viatical settlement provider, financing entity, or related  
535 provider trust that is involved in such viatical settlement  
536 contract.

537 (3) A viatical settlement provider may not enter into a  
538 viatical settlement contract unless the viatical settlement  
539 promotional, advertising, and marketing materials, as may be  
540 prescribed by rule, have been filed with the office. Such  
541 materials may not expressly indicate, or include any reference  
542 that would cause a viator to reasonably believe, that the life  
543 insurance is free for any period of time.

544 (4) A life insurance producer, insurer, viatical settlement  
545 broker, or viatical settlement provider may not make a statement  
546 or representation to an applicant or policyholder in connection  
547 with the sale of a life insurance policy to the effect that the  
548 insurance is free or without cost to the policyholder for any  
549 period of time.

550 Section 9. Section 626.99275, Florida Statutes, is amended  
551 to read:

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552 626.99275 Prohibited practices; penalties.—

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

554 (a) ~~It~~ Knowingly enter into, broker, or otherwise deal in a  
555 viatical settlement contract the subject of which is a life  
556 insurance policy, knowing that the policy was obtained by  
557 presenting materially false information concerning any fact  
558 material to the policy or by concealing, for the purpose of  
559 misleading another, information concerning any fact material to  
560 the policy, where the viator or the viator's agent intended to  
561 defraud the policy's issuer.

562 (b) ~~It~~ Knowingly or with the intent to defraud, for the  
563 purpose of depriving another of property or for pecuniary gain,  
564 issue or use a pattern of false, misleading, or deceptive life  
565 expectancies.

566 (c) ~~It~~ Knowingly engage in any transaction, practice, or  
567 course of business intending thereby to avoid the notice  
568 requirements of s. 626.9924(7).

569 (d) ~~It~~ Knowingly or intentionally facilitate the change of  
570 state of residency of a viator to avoid the provisions of this  
571 chapter.

572 (e) Knowingly enter into a viatical settlement contract  
573 before the application for or issuance of a life insurance  
574 policy that is the subject of a viatical settlement contract or  
575 within a 5-year period commencing with the date of issuance of  
576 the policy or certificate, unless the viator provides a sworn  
577 affidavit and accompanying documentation that certifies to the  
578 viatical settlement provider that one or more of the following  
579 conditions have been met within the 5-year period:

580 1. The policy or certificate was issued upon the viator's

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581 exercise of conversion rights arising out of a group or  
582 individual policy, provided the total of the time covered under  
583 the conversion policy plus the time covered under the prior  
584 policy is at least 60 months. The time covered under a group  
585 policy shall be calculated without regard to any change in  
586 insurance carriers, provided the coverage has been continuous  
587 and under the same group sponsorship.

588 2. The viator submits independent evidence to the viatical  
589 settlement provider that one or more of the following conditions  
590 have been met within the 5-year period:

- 591 a. The viator or insured is terminally or chronically ill;  
592 b. The viator's spouse dies;  
593 c. The viator divorces his or her spouse;  
594 d. The viator retires from full-time employment;  
595 e. The viator becomes physically or mentally disabled and a  
596 physician determines that the disability prevents the viator  
597 from maintaining full-time employment; or  
598 f. A final order, judgment, or decree is entered by a court  
599 of competent jurisdiction, upon the application by a viator's  
600 creditor, which adjudicates the viator bankrupt or insolvent or  
601 approves a petition seeking reorganization of the viator or  
602 appointing a receiver, trustee, or liquidator to all or a  
603 substantial part of the viator's assets.

604 3. The viator enters into a viatical settlement contract  
605 more than 2 years after a policy's issuance date and, with  
606 respect to the policy, at all times before such date each of the  
607 following conditions is met:

- 608 a. Policy premiums have been funded exclusively with  
609 unencumbered assets, including an interest in the life insurance

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610 policy being financed only to the extent of its net cash  
 611 surrender value provided by, or full recourse liability incurred  
 612 by, the insured;

613 b. An agreement or understanding with another person has  
 614 not been entered to guarantee any such liability or to purchase,  
 615 or be ready to purchase, the policy, including through an  
 616 assumption or forgiveness of the loan; and

617 c. The insured and the policy have not been evaluated for  
 618 settlement.

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

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

623 (2) A person who violates any provision of this section  
 624 commits:

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

628 (b) A felony of the second degree, punishable as provided  
 629 in s. 775.082, s. 775.083, or s. 775.084, if the insurance  
 630 policy involved is valued at \$20,000 or more, but less than  
 631 \$100,000.

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

635  
 636 Section 10. Section 626.99276, Florida Statutes, is created  
 637 to read:

638 626.99276 Notification to insurer required.-

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639       (1) A copy of the sworn affidavit and the documentation  
640 required in s. 626.99275(1)(e) must be submitted to the insurer  
641 if the viatical settlement provider or other party entering into  
642 a viatical settlement contract with a viator submits a request  
643 to the insurer for verification of coverage or if the viatical  
644 settlement provider submits a request to transfer the policy or  
645 certificate to the provider. If the request is made by a  
646 viatical settlement provider, the copy shall be accompanied by a  
647 sworn affidavit from the viatical settlement provider affirming  
648 that the copy is a true and correct copy of the documentation  
649 received by the provider.

650       (2) An insurer may not require, as a condition of  
651 responding to a request for verification of coverage or  
652 effecting the transfer of a policy pursuant to a viatical  
653 settlement contract, that the viator, insured, viatical  
654 settlement provider, or viatical settlement broker sign any  
655 disclosures, consent form, waiver form, or other form that has  
656 not been approved by the office for use in connection with  
657 viatical settlement contracts in this state.

658       (3) Upon receipt of a properly completed request for change  
659 of ownership or beneficiary of a policy, the insurer shall  
660 respond in writing within 30 calendar days confirming that the  
661 change has been effectuated or specifying the reasons why the  
662 requested change cannot be processed. The insurer may not  
663 unreasonably delay effectuating a change of ownership or  
664 beneficiary and may not otherwise seek to interfere with any  
665 viatical settlement contract lawfully entered into in this  
666 state.

667       Section 11. Section 626.99278, Florida Statutes, is amended

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668 to read:

669 626.99278 Viatical provider anti-fraud plan.—

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

674 (a) ~~(1)~~ A description of the procedures for detecting and  
675 investigating possible fraudulent acts and procedures for  
676 resolving material inconsistencies between medical records and  
677 insurance applications.

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

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

684 (d) ~~(4)~~ A written description or chart outlining the  
685 organizational arrangement of the anti-fraud personnel who are  
686 responsible for the investigation and reporting of possible  
687 fraudulent insurance acts and for the investigation of  
688 unresolved material inconsistencies between medical records and  
689 insurance applications.

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

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

696 (a) Documentation of compliance with its anti-fraud plan

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697 and procedures filed in accordance with this section.

698 (b) Documentation pertaining to resolved and unresolved  
699 material inconsistencies between medical records and insurance  
700 applications.

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

704 Section 12. Section 626.99287, Florida Statutes, is  
705 repealed.

706 Section 13. Section 626.99289, Florida Statutes, is created  
707 to read:

708 626.99289 Void and unenforceable contracts, agreements,  
709 arrangements, and transactions.—A contract, agreement,  
710 arrangement, or transaction, including, but not limited to, a  
711 financing agreement or any other arrangement or understanding  
712 entered into, whether written or verbal, for the furtherance or  
713 aid of a stranger-originated life insurance practice is void and  
714 unenforceable.

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