

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

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33 interest relating to viatical settlement contracts or
34 insurance policies; requiring a viatical settlement
35 provider to file certain promotional, advertising, and
36 marketing materials with the office before entering
37 into viatical settlement contracts; prohibiting
38 certain references relating to the cost of life
39 insurance policies in such materials and other
40 specified statements and representations; authorizing
41 the commission to adopt rules; amending s. 626.99275,
42 F.S.; prohibiting a person from entering into a
43 viatical settlement contract before a specified date
44 except under specified circumstances, from issuing,
45 soliciting, marketing, or otherwise promoting the
46 purchase of a policy under certain circumstances, and
47 from engaging in a fraudulent viatical settlement act;
48 providing criminal penalties for a violation of such
49 prohibitions; creating s. 626.99276, F.S.; requiring
50 specified affidavits and other documentation to be
51 provided to an insurer for requests to verify coverage
52 and to transfer a policy or certificate to a viatical
53 settlement provider; prohibiting insurers from
54 requiring certain forms that have not been approved by
55 the office to be signed as a condition of responding
56 to such requests; requiring insurers to respond in
57 writing during a specified period to properly
58 completed requests to change the ownership or
59 beneficiary of a policy; amending s. 626.99278, F.S.;

60 providing requirements for licensed viatical
61 settlement providers to maintain specified

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62 documentation relating to anti-fraud plans and
63 procedures, material inconsistencies between medical
64 records and insurance applications, and reporting of
65 specified fraudulent acts and prohibited practices;
66 amending s. 626.99287, F.S.; revising the period
67 during which certain viatical settlement contracts are
68 void and unenforceable; revising exceptions to such
69 contracts being void and unenforceable; creating s.
70 626.99289, F.S.; providing that certain contracts,
71 agreements, arrangements, and transactions relating to
72 stranger-originated life insurance practices are void
73 and unenforceable; providing an effective date.
74

75 Be It Enacted by the Legislature of the State of Florida:
76

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

79 626.9911 Definitions.—As used in this act, the term:

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

87 (2) "Financing entity" means an underwriter, placement
88 agent, lender, purchaser of securities, or purchaser of a policy
89 or certificate from a viatical settlement provider, credit
90 enhancer, or any entity that has direct ownership in a policy or

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91 certificate that is the subject of a viatical settlement
92 contract, but whose principal activity related to the
93 transaction is providing funds or credit enhancement to effect
94 the viatical settlement or the purchase of one or more
95 viaticated policies and who has an agreement in writing with one
96 or more licensed viatical settlement providers to finance the
97 acquisition of viatical settlement contracts. The term does not
98 include a nonaccredited investor or other natural person. A
99 financing entity may not enter into a viatical settlement
100 contract.

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

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

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

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

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

116 4. Premiums paid on an insurance policy;

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

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

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

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

125 9. A financing transaction.

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

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

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

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

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

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

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

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

148 (f) Embezzlement, theft, misappropriation, or conversion of

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149 moneys, funds, premiums, credits, or other property of a
150 viatical settlement provider, insurer, insured, viator,
151 insurance policyowner, or other person engaged in the business
152 of viatical settlements or insurance.

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

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

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

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

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

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

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

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178 specified in this subsection.

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

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

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

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

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

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

199 (7)~~(5)~~ "Person" has the meaning specified in s. 1.01.

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

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207 viatical settlement transaction.

208 (9)~~(7)~~ "Related provider trust" means a titling trust or
209 other trust established by a licensed viatical settlement
210 provider or financing entity for the sole purpose of holding the
211 ownership or beneficial interest in purchased policies in
212 connection with a financing transaction. The trust must have a
213 written agreement with a licensed viatical settlement provider
214 or financing entity under which the licensed viatical settlement
215 provider or financing entity is responsible for insuring
216 compliance with all statutory and regulatory requirements and
217 under which the trust agrees to make all records and files
218 relating to viatical settlement transactions available to the
219 office as if those records and files were maintained directly by
220 the licensed viatical settlement provider. This term does not
221 include an independent third-party trustee or escrow agent or a
222 trust that does not enter into agreements with a viator. A
223 related provider trust is ~~shall be~~ subject to all provisions of
224 this act that apply to the viatical settlement provider who
225 established the related provider trust, except s. 626.9912,
226 which does ~~shall~~ not apply ~~be applicable~~. A viatical settlement
227 provider may establish up to ~~no more than~~ one related provider
228 trust, and the sole trustee of such related provider trust shall
229 be the viatical settlement provider licensed under s. 626.9912.
230 The name of the licensed viatical settlement provider shall be
231 included within the name of the related provider trust.

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

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

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

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

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

258 (12) ~~(9)~~ "Viatical settlement broker" means a person who, on
259 behalf of a viator and for a fee, commission, or other valuable
260 consideration, offers or attempts to negotiate viatical
261 settlement contracts between a viator resident in this state and
262 one or more viatical settlement providers. Notwithstanding the
263 manner in which the viatical settlement broker is compensated, a
264 viatical settlement broker is deemed to represent only the

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265 viator and owes a fiduciary duty to the viator to act according
266 to the viator's instructions and in the best interest of the
267 viator. The term does not include an attorney, licensed
268 Certified Public Accountant, or investment adviser lawfully
269 registered under chapter 517, who is retained to represent the
270 viator and whose compensation is paid directly by or at the
271 direction and on behalf of the viator.

272 (13)~~(10)~~ "Viatical settlement contract" means a written
273 agreement entered into between a viatical settlement provider,
274 or its related provider trust, and a viator. The viatical
275 settlement contract includes an agreement to transfer ownership
276 or change the beneficiary designation of a life insurance policy
277 at a later date, regardless of the date that compensation is
278 paid to the viator. The agreement must establish the terms under
279 which the viatical settlement provider will pay compensation or
280 anything of value, which compensation or value is less than the
281 expected death benefit of the insurance policy or certificate,
282 in return for the viator's assignment, transfer, sale, devise,
283 or bequest of the death benefit or ownership of all or a portion
284 of the insurance policy or certificate of insurance to the
285 viatical settlement provider. The term also includes the
286 transfer for compensation or value of an ownership or a
287 beneficial interest in a trust or other entity that owns such
288 policy if the trust or other entity was formed or used for the
289 principal purpose of acquiring one or more life insurance
290 contracts that insure the life of a person residing in this
291 state, and ~~A viatical settlement contract also includes a~~
292 contract for a loan or other financial transaction secured
293 primarily by an individual or group life insurance policy. The

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294 term does not include, other than a policy loan by a life
295 insurance company pursuant to the terms of the life insurance
296 contract or accelerated death provisions contained in a life
297 insurance policy, whether issued with the original policy or as
298 a rider, or a loan secured by the cash surrender value of a
299 policy as determined by the policy issuer and the life insurance
300 policy terms, or a loan or advance from the issuer of the policy
301 to the policyowner.

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

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

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

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

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

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

321 (e) A viator in this state.

322 (f) A financing entity.

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

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

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

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

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

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

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

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

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

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

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381 office may require more frequent reporting. Failure to timely
382 file the annual statement or the audited financial statement or
383 to timely pay the license fee is grounds for immediate
384 suspension of the license. The commission may by rule require
385 all or part of the statements or filings required under this
386 section to be submitted by electronic means in a computer-
387 readable form compatible with the electronic data format
388 specified by the commission.

389 (3) To ensure the faithful performance of its obligations
390 to its viators in the event of insolvency or the loss of its
391 license, a viatical settlement provider licensee must deposit
392 and maintain deposited in trust with the department securities
393 eligible for deposit under s. 625.52, having at all times a
394 value of not less than \$250,000 ~~\$100,000~~; however, a viatical
395 settlement provider licensed in this state prior to June 1,
396 2004, which has deposited and maintains continuously deposited
397 in trust with the department securities in the amount of \$25,000
398 and which posted and maintains continuously posted a security
399 bond acceptable to the department in the amount of \$75,000, has
400 until June 1, 2005, to comply with the requirements of this
401 subsection.

402 (6) The commission may adopt rules to implement this
403 section.

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

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

409 (1) The office shall suspend, revoke, deny, or refuse to

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410 renew the license of any viatical settlement provider if the
411 office finds that the licensee has committed any of the
412 following acts:

413 (a) Has made a misrepresentation in the application for the
414 license.~~†~~

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

418 (c) Demonstrates a pattern of unreasonable payments to
419 viators.~~†~~

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

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

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

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

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

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

434 (j) No longer meets the requirements for initial
435 licensure.~~†~~~~or~~

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

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

440 (2) The office may, in lieu of or in addition to any
441 suspension or revocation, assess an administrative fine not to
442 exceed \$10,000 ~~\$2,500~~ for each nonwillful violation or \$25,000
443 ~~\$10,000~~ for each willful violation by a viatical settlement
444 provider licensee. The office may also place a viatical
445 settlement provider licensee on probation for a period not to
446 exceed 2 years.

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

449 626.99175 Life expectancy providers; registration required;
450 denial, suspension, revocation.—

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

455 Section 5. Section 626.99185, Florida Statutes, is created
456 to read:

457 626.99185 Disclosures to viator of disbursement.—

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

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

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468 insurance policies to a viatical settlement broker in connection
469 with the viatical settlement contract.

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

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

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

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

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

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

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

508 626.9924 Viatical settlement contracts; procedures;
509 rescission.—

510 (7) At any time during the contestable period, within 20
511 days after a viator executes documents necessary to transfer
512 rights under an insurance policy or within 20 days of any
513 agreement, option, promise, or any other form of understanding,
514 express or implied, to viaticate the policy, the provider must
515 give notice to the insurer of the policy that the policy has or
516 will become a viaticated policy. The notice must be accompanied
517 by the documents required by ss. 626.99276 and 626.99287 ~~s.~~
518 ~~626.99287(5)(a)~~ in their entirety.

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

521 626.99245 Conflict of regulation of viaticals.—

522 (2) This section does not affect the requirement of ss.
523 626.9911(15) ~~626.9911(12)~~ and 626.9912(1) that a viatical
524 settlement provider doing business from this state must obtain a
525 viatical settlement license from the office. As used in this

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526 subsection, the term "doing business from this state" includes
527 effectuating viatical settlement contracts from offices in this
528 state, regardless of the state of residence of the viator.

529 Section 8. Section 626.99273, Florida Statutes, is created
530 to read:

531 626.99273 Prohibited practices and conflicts of interest.-

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

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

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

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

561 (5) The commission may adopt rules to implement this
562 section.

563 Section 9. Section 626.99275, Florida Statutes, is amended
564 to read:

565 626.99275 Prohibited practices; penalties.-

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

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

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

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

582 (d) ~~The~~ Knowingly or intentionally facilitate the change of
583 state of residency of a viator to avoid the provisions of this

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584 chapter.

585 (e) Knowingly enter into a viatical settlement contract
586 before the application for or issuance of a life insurance
587 policy that is the subject of a viatical settlement contract or
588 during the 5-year period commencing on the date of issuance of
589 the policy or certificate, unless the viator provides a sworn
590 affidavit and accompanying documentation in accordance with s.
591 626.9987.

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

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

596 (2) A person who violates any provision of this section
597 commits:

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

601 (b) A felony of the second degree, punishable as provided
602 in s. 775.082, s. 775.083, or s. 775.084, if the insurance
603 policy involved is valued at \$20,000 or more, but less than
604 \$100,000.

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

608 Section 10. Section 626.99276, Florida Statutes, is created
609 to read:

610 626.99276 Notification to insurer required.-

611 (1) A copy of the sworn affidavit and the documentation
612 required in s. 626.99287 must be submitted to the insurer if the

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613 viatical settlement provider or other party entering into a
614 viatical settlement contract with a viator submits a request to
615 the insurer for verification of coverage or if the viatical
616 settlement provider submits a request to transfer the policy or
617 certificate to the provider. If the request is made by a
618 viatical settlement provider, the copy shall be accompanied by a
619 sworn affidavit from the viatical settlement provider affirming
620 that the copy is a true and correct copy of the documentation
621 received by the provider.

622 (2) An insurer may not require, as a condition of
623 responding to a request for verification of coverage or
624 effecting the transfer of a policy pursuant to a viatical
625 settlement contract, that the viator, insured, viatical
626 settlement provider, or viatical settlement broker sign any
627 disclosures, consent form, waiver form, or other form that has
628 not been approved by the office for use in connection with
629 viatical settlement contracts in this state.

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

639 Section 11. Section 626.99278, Florida Statutes, is amended
640 to read:

641 626.99278 Viatical provider anti-fraud plan.—

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

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

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

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

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

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

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

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

670 (b) Documentation pertaining to resolved and unresolved

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671 material inconsistencies between medical records and insurance
672 applications.

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

676 Section 12. Section 626.99287, Florida Statutes, is
677 amended, to read:

678 626.99287 Contestability of viaticated policies.—Except as
679 hereinafter provided, if a viatical settlement contract is
680 entered into during ~~within~~ the 5-year ~~2-year~~ period commencing
681 on ~~with~~ the date of issuance of the insurance policy or
682 certificate to be acquired, the viatical settlement contract is
683 void and unenforceable by either party. Notwithstanding this
684 limitation, such a viatical settlement contract is not void and
685 unenforceable if the viator provides a sworn affidavit and
686 accompanying documentation that certifies to the viatical
687 settlement provider that one or more of the following conditions
688 were met during the 5-year period:

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

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

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

699 (4) The viatical settlement contract was entered into

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700 before July 1, 2000;

701 (5) The viator certifies by producing independent evidence
702 to the viatical settlement provider that one or more of the
703 following conditions were ~~have been~~ met during ~~within~~ the 5-year
704 ~~2-year~~ period:

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

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

708 ~~b. Requires a course of treatment for a period of at least~~
709 ~~3 years of long-term care or home health care; and~~

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

712 (b) The viator's spouse dies;

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

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

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

718 (f) The owner of the policy was the insured's employer at
719 the time the policy or certificate was issued and the employment
720 relationship terminated;

721 (g) A final order, judgment, or decree is entered by a
722 court of competent jurisdiction, on the application of a
723 creditor of the viator, adjudicating the viator bankrupt or
724 insolvent, or approving a petition seeking reorganization of the
725 viator or appointing a receiver, trustee, or liquidator to all
726 or a substantial part of the viator's assets; or

727 (h) The viator experiences a significant decrease in income
728 which is unexpected by the viator and which impairs his or her

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729 reasonable ability to pay the policy premium.

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

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

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

743 (c) The insured and the policy were not evaluated for
744 settlement.

745

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

756 Section 13. Section 626.99289, Florida Statutes, is created
757 to read:

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

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