

By the Committee on Banking and Insurance; and Senator Garcia

597-1927-05

1 A bill to be entitled
2 An act relating to viatical settlements;
3 amending s. 517.021, F.S.; revising and
4 providing definitions; creating s. 517.072,
5 F.S.; specifying nonapplication of certain
6 exemptions to viatical settlement investments;
7 specifying the offering of a viatical
8 settlement investment as not an exempt
9 transaction under certain provisions of law;
10 amending s. 517.081, F.S.; authorizing the
11 Financial Services Commission to adopt
12 additional rules relating to securities
13 registration; authorizing the commission to
14 adopt rules establishing requirements and
15 standards for disclosures and records relating
16 to viatical settlement investments; creating s.
17 517.1215, F.S.; requiring the commission to
18 adopt rules specifying requirements for certain
19 investment advisors; requiring the commission
20 to establish by rule rules of conduct and
21 prohibited business practices for investment
22 advisers and associated persons; providing
23 requirements; creating s. 517.1217, F.S.;
24 authorizing the commission to establish by rule
25 rules of conduct and prohibited business
26 practices for dealers and associated persons;
27 providing requirements; amending s. 624.501,
28 F.S.; including agents making an appointment
29 under certain life insurance agent fee
30 provisions; amending ss. 626.015, 626.112,
31 626.207, and 626.331, F.S., to conform;

1 amending s. 626.611, F.S.; providing an
2 additional ground for compulsory refusal,
3 suspension, or revocation of certain licenses
4 or appointments for transactions relating to
5 viatical settlement contracts; amending s.
6 626.777, F.S., to conform; amending s.
7 626.7845, F.S.; prohibiting certain activities
8 by a person relating to viatical settlement
9 contracts unless he or she is a licensed life
10 agent; amending s. 626.9911, F.S.; revising
11 definitions; amending s. 626.9912, F.S., to
12 conform; amending s. 626.9913, F.S.; specifying
13 additional requirements for annual statements
14 by viatical settlement provider licensees;
15 providing an alternative bond provision for
16 certain viatical settlement providers for a
17 certain time period; prohibiting certain
18 persons from levying upon certain assets or
19 securities under certain circumstances;
20 requiring annual statements to contain certain
21 information; amending s. 626.9914, F.S.;
22 including the authority to deny a license among
23 the adverse actions the Office of Insurance
24 Regulation may take against a viatical
25 settlement provider for certain actions;
26 amending s. 626.9916, F.S.; revising licensure
27 requirements for viatical settlement brokers;
28 providing for self-appointment; providing for
29 transfers of appointments; providing for
30 termination of licenses; specifying a fiduciary
31 duty of viatical settlement brokers;

1 prohibiting dividing or sharing compensation
2 received by a life agent for certain activities
3 under certain circumstances; amending ss.
4 626.9919, 626.992, and 626.9921, F.S., to
5 conform; amending s. 626.9922, F.S.; specifying
6 office jurisdiction over certain viatical
7 settlement purchase agreements; authorizing the
8 office to refer certain cases to the United
9 States Securities and Exchange Commission for
10 administrative action under certain
11 circumstances; providing application to life
12 expectancy providers; amending ss. 626.99245,
13 626.9925, 626.9926, and 626.9927, F.S., to
14 conform; amending s. 626.99275, F.S.; revising
15 a prohibited practice to apply to issuing life
16 expectancies under certain circumstances;
17 providing a criminal penalty; amending s.
18 626.99278, F.S.; requiring an anti-fraud plan
19 to include a life expectancy accuracy review
20 process; amending ss. 626.9928 and 626.99285,
21 F.S., to conform; amending s. 626.99295, F.S.;
22 revising application of a grace period for
23 certain viatical settlement purchase
24 agreements; repealing s. 626.9917, F.S.,
25 relating to denial, suspension, revocation, or
26 nonrenewal of viatical settlement broker
27 licenses; repealing s. 626.9918, F.S., relating
28 to effect of suspension or revocation of
29 viatical settlement broker licenses; repealing
30 s. 626.99235, F.S., relating to disclosures to
31 viatical settlement purchasers; repealing s.

1 626.99236, F.S., relating to further
2 disclosures to viatical settlement purchasers;
3 repealing s. 626.99277, F.S., relating to false
4 representations; providing an effective date.
5

6 Be It Enacted by the Legislature of the State of Florida:
7

8 Section 1. Subsections (19) and (21) of section
9 517.021, Florida Statutes, are renumbered as subsections (20)
10 and (22), respectively, present subsection (20) is renumbered
11 as subsection (21) and amended, and subsections (19) and (23)
12 are added to that section, to read:

13 517.021 Definitions.--When used in this chapter,
14 unless the context otherwise indicates, the following terms
15 have the following respective meanings:

16 (19) "Qualified institutional buyer" means any
17 qualified institutional buyer, as defined in United States
18 Securities and Exchange Commission Rule 144A, 17 C.F.R.
19 230.144A(a), under the Securities Act of 1933, as amended, or
20 any foreign buyer that satisfies the minimum financial
21 requirements set forth in such rule.

22 ~~(21)(20)~~ "Security" includes any of the following:

- 23 (a) A note.
24 (b) A stock.
25 (c) A treasury stock.
26 (d) A bond.
27 (e) A debenture.
28 (f) An evidence of indebtedness.
29 (g) A certificate of deposit.
30 (h) A certificate of deposit for a security.
31 (i) A certificate of interest or participation.

1 (j) A whiskey warehouse receipt or other commodity
2 warehouse receipt.

3 (k) A certificate of interest in a profit-sharing
4 agreement or the right to participate therein.

5 (l) A certificate of interest in an oil, gas,
6 petroleum, mineral, or mining title or lease or the right to
7 participate therein.

8 (m) A collateral trust certificate.

9 (n) A reorganization certificate.

10 (o) A preorganization subscription.

11 (p) Any transferable share.

12 (q) An investment contract.

13 (r) A beneficial interest in title to property,
14 profits, or earnings.

15 (s) An interest in or under a profit-sharing or
16 participation agreement or scheme.

17 (t) Any option contract which entitles the holder to
18 purchase or sell a given amount of the underlying security at
19 a fixed price within a specified period of time.

20 (u) Any other instrument commonly known as a security,
21 including an interim or temporary bond, debenture, note, or
22 certificate.

23 (v) Any receipt for a security, or for subscription to
24 a security, or any right to subscribe to or purchase any
25 security.

26 (w) A viatical settlement investment.

27 (23) "Viatical settlement investment" means an
28 agreement for the purchase, sale, assignment, transfer,
29 devise, or bequest of all or any portion of a legal or
30 equitable interest in a viaticated policy as defined in
31 chapter 626. The term does not include:

1 (a) The transfer or assignment of an interest in a
2 previously viaticated policy from a natural person who
3 transfers or assigns no more than one such interest in 1
4 calendar year.

5 (b) The provision of stop-loss coverage to a viatical
6 settlement provider, financing entity, or related provider
7 trust, as those terms are defined in s. 626.9911, by an
8 authorized or eligible insurer.

9 (c) The transfer or assignment of a viaticated policy
10 from a licensed viatical settlement provider to another
11 licensed viatical settlement provider, a related provider
12 trust, or a financing entity, as those terms are defined in s.
13 626.9911, or to a contingency insurer provided that such
14 transfer or assignment is not the direct or indirect promotion
15 of any scheme or enterprise with the intent of violating or
16 evading any provision of this chapter.

17 (d) The transfer or assignment of a viaticated policy
18 to a bank, trust company, savings institution, insurance
19 company, dealer, investment company as defined in the
20 Investment Company Act of 1940, pension or profit-sharing
21 trust, or qualified institutional buyer as defined in United
22 States Securities and Exchange Commission Rule 144A, 17 C.F.R.
23 230.144A(a), provided such transfer or assignment is not for
24 the direct or indirect promotion of any scheme or enterprise
25 with the intent of violating or evading any provision of this
26 chapter.

27 (e) The transfer or assignment of a viaticated policy
28 by a conservator of a viatical settlement provider appointed
29 by a court of competent jurisdiction who transfers or assigns
30 ownership of viaticated policies pursuant to that court's
31 order.

1 Section 2. Section 517.072, Florida Statutes, is
2 created to read:

3 517.072 Viatical settlement investments.--The
4 exemptions provided for by ss. 517.051(6), (8), and (10) do
5 not apply to a viatical settlement investment. The offering of
6 a viatical settlement investment is not an exempt transaction
7 under s. 517.061(2), (3), (8), (11), and (18), regardless of
8 whether the offering otherwise complies with the conditions of
9 that section, unless such offering is to a qualified
10 institutional buyer.

11 Section 3. Subsection (7) of section 517.081, Florida
12 Statutes, is amended, and subsection (8) is added to that
13 section, to read:

14 517.081 Registration procedure.--

15 (7) If upon examination of any application the office
16 shall find that the sale of the security referred to therein
17 would not be fraudulent and would not work or tend to work a
18 fraud upon the purchaser, that the terms of the sale of such
19 securities would be fair, just, and equitable, and that the
20 enterprise or business of the issuer is not based upon unsound
21 business principles, it shall record the registration of such
22 security in the register of securities; and thereupon such
23 security so registered may be sold by any registered dealer,
24 subject, however, to the further order of the office. In order
25 to determine if an offering is fair, just, and equitable, the
26 commission may by rule establish requirements and standards
27 for the filing, content, and circulation of any preliminary,
28 final, or amended prospectus and other sales literature and
29 may by rule establish merit qualification criteria relating to
30 the issuance of equity securities, debt securities, insurance
31 company securities, real estate investment trusts, and other

1 traditional and nontraditional investments, including, but not
2 limited to, oil and gas investments. The criteria may include
3 such elements as the promoter's equity investment ratio, the
4 financial condition of the issuer, the voting rights of
5 shareholders, the grant of options or warrants to underwriters
6 and others, loans and other affiliated transaction, the use or
7 refund of proceeds of the offering, and such other relevant
8 criteria as the office in its judgment may deem necessary to
9 such determination.

10 (8) The commission may by rule establish requirements
11 and standards for:

12 (a) Disclosures to purchasers of viatical settlement
13 investments.

14 (b) Recordkeeping requirements for sellers of viatical
15 settlement investments.

16 Section 4. Section 517.1215, Florida Statutes, is
17 created to read:

18 517.1215 Requirements, rules of conduct, and
19 prohibited business practices for investment advisors and
20 their associated persons.--

21 (1) The commission shall specify by rule requirements
22 for investment advisors deemed to have custody of client funds
23 which concern the following:

24 (a) Notification of custody of, maintenance of, and
25 safeguards for client funds.

26 (b) Communications with clients and independent
27 representatives.

28 (c) Requirements for investment advisers who have
29 custody of pooled investments.

30 (d) Exceptions to the custody requirements.
31

1 In adopting the rules, the commission shall consider the rules
2 and regulations of the federal regulatory authority and the
3 North American Securities Administrators Association.

4 (2) The commission shall by rule establish rules of
5 conduct and prohibited business practices for investment
6 advisers and their associated persons. In adopting the rules,
7 the commission shall consider general industry standards as
8 expressed in the rules and regulations of the various federal
9 and self-regulatory agencies and regulatory associations,
10 including, but not limited to, the United States Securities
11 and Exchange Commission, the National Association of
12 Securities Dealers, and the North American Securities
13 Administrators Association.

14 Section 5. Section 517.1217, Florida Statutes, is
15 created to read:

16 517.1217 Rules of conduct and prohibited business
17 practices for dealers and their associated persons.--The
18 commission by rule may establish rules of conduct and
19 prohibited business practices for dealers and their associated
20 persons. In adopting the rules, the commission shall consider
21 general industry standards as expressed in the rules and
22 regulations of the various federal and self-regulatory
23 agencies and regulatory associations, including, but not
24 limited to, the United States Securities and Exchange
25 Commission, the National Association of Securities Dealers,
26 and the North American Securities Administrators Association.

27 Section 6. Paragraph (a) of subsection (7) of section
28 624.501, Florida Statutes, is amended to read:

29 624.501 Filing, license, appointment, and
30 miscellaneous fees.--The department, commission, or office, as
31 appropriate, shall collect in advance, and persons so served

1 shall pay to it in advance, fees, licenses, and miscellaneous
2 charges as follows:

3 (7) Life insurance agents.

4 (a) Agent's original appointment and biennial renewal
5 or continuation thereof, each insurer or agent making an
6 appointment:

7	Appointment.....	\$42.00
8	State tax.....	12.00
9	County tax.....	6.00
10	Total.....	\$60.00

11 Section 7. Subsection (10) of section 626.015, Florida
12 Statutes, is amended to read:

13 626.015 Definitions.--As used in this part:

14 (10) "Life agent" means an individual representing an
15 insurer as to life insurance and annuity contracts, or acting
16 as a viatical settlement broker as defined in s. 626.9911,
17 including agents appointed to transact life insurance,
18 fixed-dollar annuity contracts, or variable contracts by the
19 same insurer.

20 Section 8. Paragraph (b) of subsection (1) of section
21 626.112, Florida Statutes, is amended to read:

22 626.112 License and appointment required; agents,
23 customer representatives, adjusters, insurance agencies,
24 service representatives, managing general agents.--

25 (1)

26 (b) Except as provided in subsection (6) or in
27 applicable department rules, and in addition to other conduct
28 described in this chapter with respect to particular types of
29 agents, a license as an insurance agent, service
30 representative, customer representative, or limited customer
31 representative is required in order to engage in the

1 solicitation of insurance. For purposes of this requirement,
2 as applicable to any of the license types described in this
3 section, the solicitation of insurance is the attempt to
4 persuade any person to purchase an insurance product by:

5 1. Describing the benefits or terms of insurance
6 coverage, including premiums or rates of return;

7 2. Distributing an invitation to contract to
8 prospective purchasers;

9 3. Making general or specific recommendations as to
10 insurance products;

11 4. Completing orders or applications for insurance
12 products; ~~or~~

13 5. Comparing insurance products, advising as to
14 insurance matters, or interpreting policies or coverages; or

15 6. Offering or attempting to negotiate on behalf of
16 another person a viatical settlement contract as defined in s.
17 626.9911.

18
19 However, an employee leasing company licensed pursuant to
20 chapter 468 which is seeking to enter into a contract with an
21 employer that identifies products and services offered to
22 employees may deliver proposals for the purchase of employee
23 leasing services to prospective clients of the employee
24 leasing company setting forth the terms and conditions of
25 doing business; classify employees as permitted by s. 468.529;
26 collect information from prospective clients and other sources
27 as necessary to perform due diligence on the prospective
28 client and to prepare a proposal for services; provide and
29 receive enrollment forms, plans, and other documents; and
30 discuss or explain in general terms the conditions,
31 limitations, options, or exclusions of insurance benefit plans

1 available to the client or employees of the employee leasing
2 company were the client to contract with the employee leasing
3 company. Any advertising materials or other documents
4 describing specific insurance coverages must identify and be
5 from a licensed insurer or its licensed agent or a licensed
6 and appointed agent employed by the employee leasing company.
7 The employee leasing company may not advise or inform the
8 prospective business client or individual employees of
9 specific coverage provisions, exclusions, or limitations of
10 particular plans. As to clients for which the employee leasing
11 company is providing services pursuant to s. 468.525(4), the
12 employee leasing company may engage in activities permitted by
13 ss. 626.7315, 626.7845, and 626.8305, subject to the
14 restrictions specified in those sections. If a prospective
15 client requests more specific information concerning the
16 insurance provided by the employee leasing company, the
17 employee leasing company must refer the prospective business
18 client to the insurer or its licensed agent or to a licensed
19 and appointed agent employed by the employee leasing company.

20 Section 9. Section 626.207, Florida Statutes, is
21 amended to read:

22 626.207 Department rulemaking authority; waiting
23 periods for applicants; penalties against licensees.--

24 (1) The department shall adopt rules establishing
25 specific waiting periods for applicants to become eligible for
26 licensure following denial, suspension, or revocation pursuant
27 to s. 626.611, s. 626.621, s. 626.8437, s. 626.844, s.
28 626.935, ~~s. 626.9917~~, s. 634.181, s. 634.191, s. 634.320, s.
29 634.321, s. 634.422, s. 634.423, s. 642.041, or s. 642.043.
30 The purpose of the waiting periods is to provide sufficient
31 time to demonstrate reformation of character and

1 rehabilitation. The waiting periods shall vary based on the
2 type of conduct and the length of time since the conduct
3 occurred and shall also be based on the probability that the
4 propensity to commit illegal conduct has been overcome. The
5 waiting periods may be adjusted based on aggravating and
6 mitigating factors established by rule and consistent with
7 this purpose.

8 (2) The department shall adopt rules establishing
9 specific penalties against licensees for violations of s.
10 626.611, s. 626.621, s. 626.8437, s. 626.844, s. 626.935, ~~s.~~
11 ~~626.9917~~, s. 634.181, s. 634.191, s. 634.320, s. 634.321, s.
12 634.422, s. 634.423, s. 642.041, or s. 642.043. The purpose of
13 the revocation or suspension is to provide a sufficient
14 penalty to deter future violations of the Florida Insurance
15 Code. The imposition of a revocation or the length of
16 suspension shall be based on the type of conduct and the
17 probability that the propensity to commit further illegal
18 conduct has been overcome at the time of eligibility for
19 relicensure. The revocation or the length of suspension may be
20 adjusted based on aggravating or mitigating factors,
21 established by rule and consistent with this purpose.

22 Section 10. Subsection (2) of section 626.331, Florida
23 Statutes, is amended to read:

24 626.331 Number of appointments permitted or
25 required.--

26 (2) An agent shall be required to have a separate
27 appointment as to each insurer by whom he or she is appointed
28 as an agent. An agent must appoint himself or herself before
29 performing the functions of a viatical settlement broker.

30 Section 11. Subsection (17) is added to section
31 626.611, Florida Statutes, to read:

1 626.611 Grounds for compulsory refusal, suspension, or
2 revocation of agent's, title agency's, adjuster's, customer
3 representative's, service representative's, or managing
4 general agent's license or appointment.--The department shall
5 deny an application for, suspend, revoke, or refuse to renew
6 or continue the license or appointment of any applicant,
7 agent, title agency, adjuster, customer representative,
8 service representative, or managing general agent, and it
9 shall suspend or revoke the eligibility to hold a license or
10 appointment of any such person, if it finds that as to the
11 applicant, licensee, or appointee any one or more of the
12 following applicable grounds exist:

13 (17) In transactions related to viatical settlement
14 contracts as defined in s. 626.9911:

15 (a) Commission of a fraudulent or dishonest act.

16 (b) No longer meeting the requirements for initial
17 licensure.

18 (c) Having received a fee, commission, or other
19 valuable consideration for his or her services with respect to
20 viatical settlements that involved unlicensed viatical
21 settlement providers or persons who offered or attempted to
22 negotiate on behalf of another person a viatical settlement
23 contract as defined in s. 626.9911 and who were not licensed
24 life agents.

25 (d) Dealing in bad faith with viators.

26 Section 12. Section 626.777, Florida Statutes, is
27 amended to read:

28 626.777 Scope of this part.--This part applies only to
29 agents of life insurers, ~~and to~~ agents who are appointed by
30 the same insurer as to both life insurance and health
31

1 insurance, and agents who perform the functions of a viatical
2 settlement broker as defined in s. 626.9911.

3 Section 13. Subsection (2) of section 626.7845,
4 Florida Statutes, is amended to read:

5 626.7845 Prohibition against unlicensed transaction of
6 life insurance.--

7 (2) Except as provided in s. 626.112(6), with respect
8 to any line of authority specified in s. 626.015(10), no
9 individual shall, unless licensed as a life agent:

10 (a) Solicit insurance or annuities or procure
11 applications; ~~or~~

12 (b) In this state, engage or hold himself or herself
13 out as engaging in the business of analyzing or abstracting
14 insurance policies or of counseling or advising or giving
15 opinions to persons relative to insurance or insurance
16 contracts other than:

- 17 1. As a consulting actuary advising an insurer; or
18 2. As to the counseling and advising of labor unions,
19 associations, trustees, employers, or other business entities,
20 the subsidiaries and affiliates of each, relative to their
21 interests and those of their members or employees under
22 insurance benefit plans; or

23 (c) In this state, from this state, or with a resident
24 of this state, offer or attempt to negotiate on behalf of
25 another person a viatical settlement contract as defined in s.
26 626.9911.

27 Section 14. Section 626.9911, Florida Statutes, is
28 amended to read:

29 626.9911 Definitions.--As used in this act, the term:

30 ~~(1)(14)~~ "Financing entity" means an underwriter,
31 placement agent, lender, purchaser of securities, or purchaser

1 of a policy or certificate from a viatical settlement
2 provider, credit enhancer, or any entity that has direct
3 ownership in a policy or certificate that is the subject of a
4 viatical settlement contract, but whose principal activity
5 related to the transaction is providing funds or credit
6 enhancement to effect the viatical settlement or the purchase
7 of one or more viaticated ~~viatical~~ policies and who has an
8 agreement in writing with one or more licensed viatical
9 settlement providers to finance the acquisition of viatical
10 settlement contracts. The term does not include a
11 nonaccredited investor, ~~a viatical settlement purchaser,~~ or
12 other natural person. A financing entity may not enter into a
13 viatical settlement contract.

14 ~~(2)(1)~~ "Independent third-party trustee or escrow
15 agent" means an attorney, certified public accountant,
16 financial institution, or other person providing escrow
17 services under the authority of a regulatory body. The term
18 does not include any person associated, affiliated, or under
19 common control with a viatical settlement provider or viatical
20 settlement broker.

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

24 (4) "Life expectancy provider" means a person that
25 provides to a viatical settlement provider or viatical
26 settlement broker a life expectancy.

27 ~~(5)(2)~~ "Person" has the meaning specified in s. 1.01.

28 ~~(6)(12)~~ "Related form" means any form, created by or
29 on behalf of a licensee, which a viator ~~or viatical settlement~~
30 ~~purchaser~~ is required to sign or initial. The forms include,
31 but are not limited to, a power of attorney, a release of

1 | medical information form, a suitability questionnaire, a
2 | disclosure document, or any addendum, schedule, or amendment
3 | to a viatical settlement contract ~~or viatical settlement~~
4 | ~~purchase agreement~~ considered necessary by a provider to
5 | effectuate a viatical settlement transaction.

6 | (7) "Related provider trust" means a titling trust or
7 | other trust established by a licensed viatical settlement
8 | provider or financing entity for the sole purpose of holding
9 | the ownership or beneficial interest in purchased policies in
10 | connection with a financing transaction. The trust must have a
11 | written agreement with a licensed viatical settlement provider
12 | or financing entity under which the licensed viatical
13 | settlement provider or financing entity is responsible for
14 | insuring compliance with all statutory and regulatory
15 | requirements and under which the trust agrees to make all
16 | records and files relating to viatical settlement transactions
17 | available to the office as if those records and files were
18 | maintained directly by the licensed viatical settlement
19 | provider. This term does not include an independent
20 | third-party trustee or escrow agent or a trust that does not
21 | enter into agreements with a viator. A related provider trust
22 | shall be subject to all provisions of this act that apply to
23 | the viatical settlement provider who established the related
24 | provider trust, except s. 626.9912, which shall not be
25 | applicable. A viatical settlement provider may establish no
26 | more than one related provider trust, and the sole trustee of
27 | such related provider trust shall be the viatical settlement
28 | provider licensed under s. 626.9912. The name of the licensed
29 | viatical settlement provider shall be included within the name
30 | of the related provider trust.

1 (8)~~(13)~~ "Special purpose entity" means an entity
2 established by a licensed viatical settlement provider or by a
3 financing entity, which may be a corporation, partnership,
4 trust, limited liability company, or other similar entity
5 formed solely to provide, either directly or indirectly,
6 access to institutional capital markets to a viatical
7 settlement provider or financing entity. A special purpose
8 entity shall not enter into a viatical settlement contract ~~or~~
9 ~~a viatical settlement purchase agreement.~~

10 (9)~~(3)~~ "Viatical settlement broker" means a person
11 who, on behalf of a viator and for a fee, commission, or other
12 valuable consideration, offers or attempts to negotiate
13 viatical settlement contracts between a viator resident in
14 this state and one or more viatical settlement providers.
15 Notwithstanding the manner in which the viatical settlement
16 broker is compensated, a viatical settlement broker is deemed
17 to represent only the viator and owes a fiduciary duty to the
18 viator to act according to the viator's instructions and in
19 the best interest of the viator. The term does not include an
20 attorney, licensed Certified Public Accountant, or investment
21 adviser lawfully registered under chapter 517, who is retained
22 to represent the viator and whose compensation is paid
23 directly by or at the direction and on behalf of the viator.

24 (10)~~(4)~~ "Viatical settlement contract" means a written
25 agreement entered into between a viatical settlement provider,
26 or its related provider trust, and a viator. The viatical
27 settlement contract includes an agreement to transfer
28 ownership or change the beneficiary designation of a life
29 insurance policy at a later date, regardless of the date that
30 compensation is paid to the viator. The agreement must
31 establish the terms under which the viatical settlement

1 provider will pay compensation or anything of value, which
2 compensation or value is less than the expected death benefit
3 of the insurance policy or certificate, in return for the
4 viator's assignment, transfer, sale, devise, or bequest of the
5 death benefit or ownership of all or a portion of the
6 insurance policy or certificate of insurance to the viatical
7 settlement provider. A viatical settlement contract also
8 includes a contract for a loan or other financial transaction
9 secured primarily by an individual or group life insurance
10 policy, other than a loan by a life insurance company pursuant
11 to the terms of the life insurance contract, or a loan secured
12 by the cash value of a policy.

13 (11)~~(5)~~ "Viatical settlement provider" means a person
14 who, in this state, from this state, or with a resident of
15 this state, effectuates a viatical settlement contract. The
16 term does not include:

17 (a) Any bank, savings bank, savings and loan
18 association, credit union, or other licensed lending
19 institution that takes an assignment of a life insurance
20 policy as collateral for a loan.

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

24 (c) Any natural person who enters into no more than
25 one viatical settlement contract with a viator in 1 calendar
26 year, unless such natural person has previously been licensed
27 under this act or is currently licensed under this act.

28 (d) A trust that meets the definition of a "related
29 provider trust."

30 (e) A viator in this state.

31 ~~(f) A viatical settlement purchaser.~~

1 ~~(f)~~~~(g)~~ A financing entity.

2 ~~(12)~~~~(11)~~ "Viaticated policy" means a life insurance
3 policy, or a certificate under a group policy, which is the
4 subject of a viatical settlement contract.

5 ~~(13)~~~~(6)~~ "Viator" means the owner of a life insurance
6 policy or a certificateholder under a group policy, which
7 policy is not a viaticated policy, who enters or seeks to
8 enter into a viatical settlement contract. This term does not
9 include a ~~viatical settlement purchaser or a viatical~~
10 settlement provider or any person acquiring a policy or
11 interest in a policy from a viatical settlement provider, nor
12 does it include an independent third-party trustee or escrow
13 agent.

14 ~~(8)~~ "~~Viatical settlement purchase agreement~~" means a
15 contract or agreement, entered into by a viatical settlement
16 purchaser, to which the viator is not a party, to purchase a
17 life insurance policy or an interest in a life insurance
18 policy, which is entered into for the purpose of deriving an
19 economic benefit. The term also includes purchases made by
20 viatical settlement purchasers from any person other than the
21 provider who effectuated the viatical settlement contract.

22 ~~(9)~~ "~~Viatical settlement purchaser~~" means a person who
23 gives a sum of money as consideration for a life insurance
24 policy or an equitable or legal interest in the death benefits
25 of a life insurance policy that has been or will be the
26 subject of a viatical settlement contract, for the purpose of
27 deriving an economic benefit, including purchases made from
28 any person other than the provider who effectuated the
29 viatical settlement contract or an entity affiliated with the
30 provider. The term does not include a licensee under this
31 part, an accredited investor as defined in Rule 501,

1 ~~Regulation D of the Securities Act Rules, or a qualified~~
2 ~~institutional buyer as defined by Rule 144(a) of the Federal~~
3 ~~Securities Act, a special purpose entity, a financing entity,~~
4 ~~or a contingency insurer. The above references to Rule 501,~~
5 ~~Regulation D and Rule 144(a) of the Federal Securities Act are~~
6 ~~used strictly for defining purposes and shall not be~~
7 ~~interpreted in any other manner. Any person who claims to be~~
8 ~~an accredited investor shall sign an affidavit stating that he~~
9 ~~or she is an accredited investor, the basis of that claim, and~~
10 ~~that he or she understands that as an accredited investor he~~
11 ~~or she will not be entitled to certain protections of the~~
12 ~~Viatical Settlement Act. This affidavit must be kept with~~
13 ~~other documents required to be maintained by this act.~~

14 ~~(10) "Viatical settlement sales agent" means a person~~
15 ~~other than a licensed viatical settlement provider who~~
16 ~~arranges the purchase through a viatical settlement purchase~~
17 ~~agreement of a life insurance policy or an interest in a life~~
18 ~~insurance policy.~~

19 Section 15. Paragraph (f) of subsection (3) and
20 subsection (4) of section 626.9912, Florida Statutes, are
21 amended to read:

22 626.9912 Viatical settlement provider license
23 required; application for license.--

24 (3) In the application, the applicant must provide all
25 of the following:

26 (f) All applications, viatical settlement contract
27 forms, ~~viatical settlement purchase agreement forms,~~ escrow
28 forms, and other related forms proposed to be used by the
29 applicant.

30 (4) The office may not issue a license to an entity
31 other than a natural person if it is not satisfied that all

1 officers, directors, employees, stockholders, partners, and
2 any other persons who exercise or have the ability to exercise
3 effective control of the entity or who have the ability to
4 influence the transaction of business by the entity meet the
5 standards of this act and have not violated any provision of
6 this act or rules of the commission related to the business of
7 viatical settlement contracts ~~or viatical settlement purchase~~
8 ~~agreements.~~

9 Section 16. Section 626.9913, Florida Statutes, is
10 amended to read:

11 626.9913 Viatical settlement provider license
12 continuance; annual report; fees; deposit.--

13 (1) A viatical settlement provider license continues
14 in force until suspended or revoked.

15 (2) Annually, on or before March 1, the viatical
16 settlement provider licensee shall file a statement containing
17 information the commission requires and shall pay to the
18 office a license fee in the amount of \$500. The annual
19 statement shall include audited financial statements prepared
20 in accordance with generally accepted accounting principles by
21 an independent certified public accountant as of the last day
22 of the preceding calendar year. A viatical settlement provider
23 shall include in all statements filed with the office all
24 information requested by the office regarding a related
25 provider trust established by the viatical settlement
26 provider. The office may require more frequent reporting.
27 Failure to timely file the annual statement or to timely pay
28 the license fee is grounds for immediate suspension of the
29 license.

30 (3) To ensure the faithful performance of its
31 obligations to its viators in the event of insolvency or the

1 loss of its license, a viatical settlement provider licensee
2 must deposit and maintain deposited in trust with the
3 department securities eligible for deposit under s. 625.52,
4 having at all times a value of not less than \$100,000,
5 provided a viatical settlement provider in this state licensed
6 prior to June 1, 2004, which has deposited and maintains
7 continuously deposited in trust with the department securities
8 in the amount of \$25,000 and which posted and maintains
9 continuously posted a security bond acceptable to the
10 department in the amount of \$75,000, has until June 1, 2005,
11 to comply with the requirements of this subsection. As an
12 ~~alternative to meeting the \$100,000 deposit requirement, the~~
13 ~~provider may deposit and maintain deposited in trust with the~~
14 ~~department such securities in the amount of \$25,000 and post~~
15 ~~with the office a surety bond acceptable to the office in the~~
16 ~~amount of \$75,000.~~

17 (4) There shall be no additional annual license fee or
18 deposit requirements under this act for a related provider
19 trust established by a viatical settlement provider.

20 (5) A judgment creditor or other claimant of a
21 viatical settlement provider may not levy upon any of the
22 assets or securities held in this state pursuant to this
23 section.

24 (6) The annual statement shall also contain the
25 following information in electronic format as set forth by the
26 office:

27 (a) For each viatical settlement contract entered into
28 during the reporting period:

29 1. A unique identifying number or other consistent
30 identifier that corresponds to each viator in the statement,

31

1 as a means of identifying the viator in a manner that does not
2 reveal any confidential information.
3 2. The date, month, and year the viatical settlement
4 contract was signed by all necessary parties.
5 3. The insurance carrier's name.
6 4. The age and each life expectancy, in months, of the
7 insured at the time the viatical settlement contract was
8 entered into.
9 5. The viator's state of residence at the time of
10 contract.
11 6. The face amount of policy purchased.
12 7. The net death benefit purchased.
13 8. The estimated total premiums to keep the policy in
14 force for life expectancy, any waiver of premium in effect, or
15 whether the premium is not applicable because the policy is
16 paid up or no premiums are due.
17 9. The net amount paid to the owner, less any
18 outstanding debts or liens.
19 10. The source of the policy, whether broker, direct
20 purchase, or secondary market, previously purchased by another
21 person.
22 11. The type of policy, individual or group.
23 12. The age of the policy at the time the viatical
24 settlement contract was effected.
25 13. The primary International Classification of
26 Diseases diagnosis code, if applicable, in numeric format, as
27 defined by the International Classification of Diseases as
28 published by the United States Department of Health and Human
29 Services.
30
31

1 14. The type of funding, whether institutional, such
2 as a bank, corporation, company, or nonindividual entity, or
3 private, such as an individual.

4 15. The status as of ending date. Allowable status
5 codes are death, if applicable; not applicable, if the date of
6 death has not been determined or verified; or sold, if the
7 settlement contract has been sold.

8 (b) For each viatical settlement contract where death
9 has occurred during the reporting period:

10 1. A unique identifying number or other consistent
11 identifier that corresponds to each viator in the report, as a
12 means of identifying the viator in a manner that does not
13 reveal any confidential information.

14 2. The date, month, and year the viatical settlement
15 contract was signed by all necessary parties.

16 3. The age and each life expectancy, in months, of the
17 insured at the time the viatical settlement contract was
18 entered into.

19 4. The viator's state of residence at the time of
20 contract.

21 5. The net death benefit collected under the policy.

22 6. The amount of total premiums paid, any waiver of
23 premium in effect, or whether the premium is not applicable
24 because the policy is paid up or no premiums are due.

25 7. The net amount paid to the owner, less any
26 outstanding debts or liens.

27 8. The Primary International Classification of
28 Diseases diagnosis code, in numeric format, if applicable, as
29 defined by the International Classification of Diseases as
30 published by the United States Department of Health and Human
31 Services.

- 1 9. The date of death.
- 2 10. The amount of time, in months, between the date
3 the viatical settlement contract was signed by all necessary
4 parties and the date of death.
- 5 11. The difference between the actual number of months
6 the insured lived after the date the contract was signed by
7 all necessary parties and the life expectancy used by the
8 reporting viatical provider.
- 9 (c) For each viatical settlement contract in which the
10 insured has not died and which was not entered into in the
11 reporting period:
- 12 1. A unique identifying number or other consistent
13 identifier that corresponds to each viator in the report as a
14 means of identifying the viator in a manner that does not
15 reveal any confidential information.
- 16 2. The date, month, and year the viatical settlement
17 contract was signed by all necessary parties.
- 18 3. The insurance carrier's name.
- 19 4. The age and each life expectancy, in months, of the
20 insured at the time the viatical settlement contract was
21 entered into.
- 22 5. The viator's state of residence at the time of
23 contract.
- 24 6. The face amount of policy purchased.
- 25 7. The net death benefit purchased.
- 26 8. The estimated total premiums to keep the policy in
27 force for life expectancy, any waiver of premium in effect, or
28 whether the premium is not applicable because the policy is
29 paid up or no premiums are due.
- 30 9. The net amount paid to the owner, less any
31 outstanding debts or liens.

1 10. The source of the policy, whether by broker,
2 direct purchase, or the secondary market, previously purchased
3 by another person.

4 11. The type of policy, whether individual or group.

5 12. The age of the policy at the time the viatical
6 settlement contract was effected.

7 13. The primary International Classification of
8 Diseases diagnosis code, if applicable, in numeric format, as
9 defined by the International Classification of Diseases as
10 published by the United States Department of Health and Human
11 Services.

12 14. The type of funding, whether institutional, such
13 as a bank, corporation, company, or nonindividual entity, or
14 private, such as an individual.

15 15. Whether the insured has outlived the life
16 expectancy. If the insured has outlived the life expectancy,
17 the number of months by which the insured has outlived the
18 life expectancy.

19 (d) The name and address of each life expectancy
20 provider used by the licensee since becoming licensed.

21 (e) The name and address of any person whom the
22 viatical settlement provider uses or employs to monitor or
23 track an insured's health status after a viatical settlement
24 contract has been signed by all necessary parties and payment
25 has been made to the owner.

26 Section 17. Subsection (1) of section 626.9914,
27 Florida Statutes, is amended to read:

28 626.9914 Suspension, revocation, or nonrenewal of
29 viatical settlement provider license; grounds; administrative
30 fine.--
31

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

4 (a) Has made a misrepresentation in the application
5 for the license;

6 (b) Has engaged in fraudulent or dishonest practices,
7 or otherwise has been shown to be untrustworthy or incompetent
8 to act as a viatical settlement provider;

9 (c) Demonstrates a pattern of unreasonable payments to
10 viators;

11 (d) Has been found guilty of, or has pleaded guilty or
12 nolo contendere to, any felony, or a misdemeanor involving
13 fraud or moral turpitude, regardless of whether a judgment of
14 conviction has been entered by the court;

15 (e) Has issued viatical settlement contracts that have
16 not been approved pursuant to this act;

17 (f) Has failed to honor contractual obligations
18 related to the business of viatical settlement contracts;

19 (g) Deals in bad faith with viators;

20 (h) Has violated any provision of the insurance code
21 or of this act;

22 (i) Employs any person who materially influences the
23 licensee's conduct and who fails to meet the requirements of
24 this act; or

25 (j) No longer meets the requirements for initial
26 licensure.

27 Section 18. Section 626.9916, Florida Statutes, is
28 amended to read:

29 626.9916 Viatical settlement broker license required ~~→~~
30 ~~application for license.--~~

31

1 (1) After October 1, 2005 ~~July 1, 1996~~, a person,
2 other than a life agent licensed under this chapter, may not
3 in this state, from this state, or with a resident of this
4 state perform the functions of a viatical settlement broker ~~as~~
5 ~~defined in this act without first having obtained a license~~
6 ~~from the department.~~

7 (2) Before performing the functions of a viatical
8 settlement broker, a life agent shall appoint himself or
9 herself with the department and pay applicable fees pursuant
10 to s. 624.501(7)(a). ~~Application for a viatical settlement~~
11 ~~broker license must be made to the department by the applicant~~
12 ~~on a form prescribed by the department, under oath, and signed~~
13 ~~by the applicant. The application must be accompanied by a \$50~~
14 ~~filing fee. If the applicant is a corporation, the application~~
15 ~~must be under oath and signed by the president and the~~
16 ~~secretary of the corporation.~~

17 (3) Each natural person who on July 1, 2005, held a
18 viatical settlement broker's license and self-appointment may,
19 upon obtaining a life agent license on or before October 1,
20 2005, transfer an existing broker self-appointment to such
21 license. In the application, the applicant must provide all of
22 the following:

23 ~~(a) The applicant's full name, age, residence address,~~
24 ~~and business address, and all occupations engaged in by the~~
25 ~~applicant during the 5 years preceding the date of the~~
26 ~~application; if the applicant is not a natural person, the~~
27 ~~applicant must provide the information required by this~~
28 ~~paragraph with respect to all officers, directors, or~~
29 ~~partners.~~

30 ~~(b) A copy of the applicant's basic organizational~~
31 ~~documents, if any, including the articles of incorporation,~~

1 ~~articles of association, partnership agreement, trust~~
2 ~~agreement, or other similar documents, together with all~~
3 ~~amendments to such documents.~~

4 ~~(c) If the applicant is not a natural person, a list~~
5 ~~showing the name, business and residence addresses, and~~
6 ~~official position of each individual who is responsible for~~
7 ~~conduct of the applicant's affairs, including, but not limited~~
8 ~~to, any member of the applicant's board of directors, board of~~
9 ~~trustees, executive committee, or other governing board or~~
10 ~~committee and any other person or entity owning or having the~~
11 ~~right to acquire 10 percent or more of the voting securities~~
12 ~~of the applicant.~~

13 ~~(d) With respect to an individual applicant and with~~
14 ~~respect to each individual identified under paragraph (c):~~

15 ~~1. A sworn biographical statement on forms supplied by~~
16 ~~the department.~~

17 ~~2. A set of fingerprints on forms prescribed by the~~
18 ~~department, certified by a law enforcement officer, and~~
19 ~~accompanied by the fingerprinting fee specified in s. 624.501.~~

20 ~~3. Authority, if required by the department, for~~
21 ~~release of information relating to the investigation of the~~
22 ~~individual's background.~~

23 ~~(e) Such other information as the department deems~~
24 ~~necessary to determine that the individual applicant and the~~
25 ~~individuals identified under paragraph (c) are competent and~~
26 ~~trustworthy and can lawfully and successfully act as a~~
27 ~~viatical settlement provider.~~

28 ~~(4) All viatical settlement broker licenses shall~~
29 ~~terminate on October 1, 2005, and shall not be subject to~~
30 ~~continuation or renewal. Any natural person who is employed by~~
31 ~~or otherwise represents a viatical settlement broker licensee,~~

1 ~~which broker licensee is not a natural person, must also be~~
2 ~~licensed as a viatical settlement broker if such employee or~~
3 ~~other representative performs the functions of a viatical~~
4 ~~settlement broker as defined in this act.~~

5 (5) Notwithstanding the manner in which the viatical
6 settlement broker is compensated, he or she is deemed to
7 represent only the viator and owes a fiduciary duty to the
8 viator to act according to the viator's instructions and in
9 the best interest of the viator. The department may not issue
10 ~~a license to an applicant if it is not satisfied that the~~
11 ~~applicant, if a natural person, or all officers, directors,~~
12 ~~employees, stockholders, and partners who exercise or have the~~
13 ~~ability to exercise effective control of the applicant or who~~
14 ~~have the ability to influence the transaction of business by~~
15 ~~the applicant, if the applicant is not a natural person, meet~~
16 ~~the standards of this act and have not violated any provision~~
17 ~~of this act or rules of the department related to the business~~
18 ~~of viatical settlement contracts.~~

19 (6) The compensation received by a life agent for
20 activities performed as a viatical settlement broker may not
21 be divided or shared with another person unless such other
22 person is a life agent licensed under this chapter and
23 appointed as provided in this part. The department may specify
24 ~~the form of the license and may require photographing of the~~
25 ~~applicant as part of the application process.~~

26 (7) ~~Upon the filing of a sworn application and the~~
27 ~~payment of the license fee and all other applicable fees under~~
28 ~~this act, the department shall investigate each applicant and~~
29 ~~may issue the applicant a license if the department finds that~~
30 ~~the applicant:~~

31

1 ~~(a) Is competent and trustworthy and intends to act in~~
2 ~~good faith in the business authorized by the license applied~~
3 ~~for.~~

4 ~~(b) Has a good business reputation and has had~~
5 ~~experience, training, or education that qualifies the~~
6 ~~applicant to conduct the business authorized by the license~~
7 ~~applied for.~~

8 ~~(c) Except with respect to applicants for nonresident~~
9 ~~licenses, is a bona fide resident of this state and actually~~
10 ~~resides in this state at least 180 days a year. If an~~
11 ~~applicant holds a similar license or an insurance agent's or~~
12 ~~broker's license in another state at the time of applying for~~
13 ~~a license under this section, the applicant may be found to~~
14 ~~meet the residency requirement of this paragraph only after he~~
15 ~~or she furnishes a letter of clearance satisfactory to the~~
16 ~~department or other proof that the applicant's resident~~
17 ~~licenses have been canceled or changed to nonresident status~~
18 ~~and that the applicant is in good standing with the licensing~~
19 ~~authority.~~

20 ~~(d) Is a corporation, a corporation incorporated under~~
21 ~~the laws of this state, or a foreign corporation authorized to~~
22 ~~transact business in this state.~~

23 ~~(e) Has designated the Chief Financial Officer as its~~
24 ~~agent for service of process.~~

25 ~~(f) If a natural person, is at least 18 years of age~~
26 ~~and a United States citizen or legal alien who possesses work~~
27 ~~authorization from the United States Bureau of Citizenship and~~
28 ~~Immigration Services.~~

29 ~~(8) An applicant for a nonresident viatical settlement~~
30 ~~broker license must, in addition to designating the Chief~~
31 ~~Financial Officer as agent for service of process as required~~

1 ~~by this section, also furnish the department with the name and~~
2 ~~address of a resident of this state upon whom notices or~~
3 ~~orders of the department or process affecting the applicant or~~
4 ~~licensee may be served. After issuance of the license, the~~
5 ~~licensee must also notify the department of change of the~~
6 ~~person to receive such notices, orders, or process; such~~
7 ~~change is not effective until acknowledged by the department.~~

8 ~~(9) The department may, by rule, specify experience,~~
9 ~~educational, or other training standards required for~~
10 ~~licensure under this section.~~

11 ~~(10) Except as otherwise provided in this section,~~
12 ~~viatical settlement brokers shall be licensed, appointed,~~
13 ~~renewed, continued, reinstated, and terminated in the manner~~
14 ~~specified in this chapter for insurance representatives~~
15 ~~generally; however, viatical settlement brokers are not~~
16 ~~subject to continuing education requirements.~~

17 Section 19. Section 626.9919, Florida Statutes, is
18 amended to read:

19 626.9919 Notice of change of licensee address or
20 name.--Each viatical settlement provider licensee, ~~viatical~~
21 ~~settlement broker licensee, and viatical settlement sales~~
22 ~~agent licensee~~ must provide the office ~~or department, as~~
23 ~~applicable,~~ at least 30 days' advance notice of any change in
24 the licensee's name, residence address, principal business
25 address, or mailing address.

26 Section 20. Section 626.992, Florida Statutes, is
27 amended to read:

28 626.992 Use of licensed viatical settlement providers
29 and viatical settlement ~~licensed~~ brokers, ~~providers, and sales~~
30 ~~agents~~ required.--
31

1 (1) A licensed viatical settlement provider may not
2 use any person to perform the functions of a viatical
3 settlement broker as defined in this act unless such person
4 holds a current, valid life agent license and has appointed
5 himself or herself in conformance with this act as a viatical
6 ~~settlement broker. Salaried individuals employed by viatical~~
7 ~~settlement providers shall engage in viatical settlement~~
8 ~~broker activities only when accompanied by a viatical~~
9 ~~settlement broker who holds a current valid license issued~~
10 ~~under this act. A viatical settlement provider may not use any~~
11 ~~person to perform the functions of a viatical settlement sales~~
12 ~~agent unless the person holds a current, valid license as~~
13 ~~provided in subsection (4).~~

14 (2) A ~~licensed~~ viatical settlement broker may not use
15 any person to perform the functions of a viatical settlement
16 provider as defined in this act unless such person holds a
17 current, valid license as a viatical settlement provider.

18 ~~(3) A viatical settlement sales agent may not use any~~
19 ~~person to perform the functions of a viatical settlement~~
20 ~~broker unless such person holds a current, valid license as a~~
21 ~~viatical settlement broker.~~

22 ~~(4) A person may not perform the functions of a~~
23 ~~viatical settlement sales agent unless licensed as a life~~
24 ~~agent as defined in s. 626.015 and as provided in this~~
25 ~~chapter.~~

26 Section 21. Subsections (1) and (2) of section
27 626.9921, Florida Statutes, are amended to read:

28 626.9921 Filing of forms; required procedures;
29 approval.--

30 (1) A viatical settlement contract form, ~~viatical~~
31 ~~settlement purchase agreement form~~, escrow form, or related

1 form may be used in this state only after the form has been
2 filed with the office and only after the form has been
3 approved by the office.

4 (2) The viatical settlement contract form, ~~viatical~~
5 ~~settlement purchase agreement form~~, escrow form, or related
6 form must be filed with the office at least 60 days before its
7 use. The form is considered approved on the 60th day after its
8 date of filing unless it has been previously disapproved by
9 the office. The office must disapprove a viatical settlement
10 contract form, ~~viatical settlement purchase agreement form~~,
11 escrow form, or related form that is unreasonable, contrary to
12 the public interest, discriminatory, or misleading or unfair
13 to the viator ~~or the purchaser~~.

14 Section 22. Subsection (2) of section 626.9922,
15 Florida Statutes, is amended, and subsections (5), (6), and
16 (7) are added to that section, to read:

17 626.9922 Examination.--

18 (2) All accounts, books and records, documents, files,
19 contracts, and other information relating to all transactions
20 of viatical settlement contracts or viatical settlement
21 purchase agreements made before July 1, 2005, must be
22 maintained by the licensee for a period of at least 3 years
23 after the death of the insured and must be available to the
24 office or department for inspection during reasonable business
25 hours.

26 (5) The office has jurisdiction over all viatical
27 settlement purchase agreements made before July 1, 2005,
28 including, but not limited to, the authority to examine
29 persons in possession of records relating to viatical
30 settlement purchase agreements made before July 1, 2005, and
31 that authority set forth in s. 624.319.

1 (6) If the office makes the determination that a
2 provider does not have the financial ability to perform its
3 present or future obligations under the viatical settlement
4 purchase agreements made before July 1, 2005, the office shall
5 make a referral to the United States Securities and Exchange
6 Commission or the Office of Financial Regulation for further
7 administrative action pursuant to s. 517.191, including, but
8 not limited to, the appointment of a receiver by the court.

9 (7) Subsections (1), (2), (3), and (4) apply to life
10 expectancy providers providing life expectancies in the state
11 and providing life expectancies to viatical settlement
12 providers in the state, as if life expectancy providers were
13 licensees.

14 Section 23. Section 626.99245, Florida Statutes, is
15 amended to read:

16 626.99245 Conflict of regulation of viaticals.--

17 ~~(1) A viatical settlement provider who from this state~~
18 ~~enters into a viatical settlement purchase agreement with a~~
19 ~~purchaser who is a resident of another state that has enacted~~
20 ~~statutes or adopted regulations governing viatical settlement~~
21 ~~purchase agreements, shall be governed in the effectuation of~~
22 ~~that viatical settlement purchase agreement by the statutes~~
23 ~~and regulations of the purchaser's state of residence. If the~~
24 ~~state in which the purchaser is a resident has not enacted~~
25 ~~statutes or regulations governing viatical settlement purchase~~
26 ~~agreements, the provider shall give the purchaser notice that~~
27 ~~neither Florida nor his or her state regulates the transaction~~
28 ~~upon which he or she is entering. For transactions in these~~
29 ~~states, however, the viatical settlement provider is to~~
30 ~~maintain all records required as if the transactions were~~

1 ~~executed in Florida. However, the forms used in those states~~
2 ~~need not be approved by the office.~~

3 ~~(1)(2)~~ A viatical settlement provider who from this
4 state enters into a viatical settlement contract with a viator
5 who is a resident of another state that has enacted statutes
6 or adopted regulations governing viatical settlement contracts
7 shall be governed in the effectuation of that viatical
8 settlement contract by the statutes and regulations of the
9 viator's state of residence. If the state in which the viator
10 is a resident has not enacted statutes or regulations
11 governing viatical settlement agreements, the provider shall
12 give the viator notice that neither Florida nor his or her
13 state regulates the transaction upon which he or she is
14 entering. For transactions in those states, however, the
15 viatical settlement provider is to maintain all records
16 required as if the transactions were executed in Florida. The
17 forms used in those states need not be approved by the office.

18 ~~(2)(3)~~ This section does not affect the requirement of
19 ss. 626.9911~~(11)(5)~~ and 626.9912(1) that a viatical settlement
20 provider doing business from this state must obtain a viatical
21 settlement license from the office. As used in this
22 subsection, the term "doing business from this state" includes
23 effectuating viatical settlement contracts ~~and effectuating~~
24 ~~viatical settlement purchase agreements~~ from offices in this
25 state, regardless of the state of residence of the viator ~~or~~
26 ~~the viatical settlement purchaser.~~

27 ~~(4)~~ ~~The offer, sale, and purchase of viatical~~
28 ~~settlement contracts, and the regulation of viatical~~
29 ~~settlement providers shall be within the exclusive~~
30 ~~jurisdiction of the Office of Insurance Regulation under the~~
31 ~~provisions of this part.~~

1 Section 24. Section 626.9925, Florida Statutes, is
2 amended to read:

3 626.9925 Rules.--The commission may adopt rules to
4 administer this act, including rules establishing standards
5 for evaluating advertising by licensees; rules providing for
6 the collection of data, for disclosures to viators ~~or~~
7 ~~purchasers~~, and for the reporting of life expectancies; and
8 rules defining terms used in this act and prescribing
9 recordkeeping requirements relating to executed viatical
10 settlement contracts ~~and viatical settlement purchase~~
11 ~~agreements~~.

12 Section 25. Section 626.9926, Florida Statutes, is
13 amended to read:

14 626.9926 Rate regulation not authorized.--Nothing in
15 this act shall be construed to authorize the office or
16 department to directly or indirectly regulate the amount paid
17 as consideration for entry into a viatical settlement contract
18 ~~or viatical settlement purchase agreement~~.

19 Section 26. Subsection (1) of section 626.9927,
20 Florida Statutes, is amended to read:

21 626.9927 Unfair trade practices; cease and desist;
22 injunctions; civil remedy.--

23 (1) A violation of this act is an unfair trade
24 practice under ss. 626.9521 and 626.9541 and is subject to the
25 penalties provided in the insurance code. Part X of this
26 chapter applies to a licensee under this act or a transaction
27 subject to this act as if a viatical settlement contract ~~and a~~
28 ~~viatical settlement purchase agreement~~ were an insurance
29 policy.

30 Section 27. Paragraph (b) of subsection (1) of section
31 626.99275, Florida Statutes, is amended to read:

1 626.99275 Prohibited practices; penalties.--
2 (1) It is unlawful for any person:
3 (b) In issuing a life expectancy, to ~~In the~~
4 ~~solicitation or sale of a viatical settlement purchase~~
5 ~~agreement:~~
6 1. Issue a life expectancy that is not based upon
7 generally accepted medical or actuarial practices ~~To employ~~
8 ~~any device, scheme, or artifice to defraud;~~
9 2. Agree to be compensated or receive compensation
10 which is contingent upon providing a specifically designated
11 life expectancy ~~To obtain money or property by means of an~~
12 ~~untrue statement of a material fact or by any omission to~~
13 ~~state a material fact necessary in order to make the~~
14 ~~statements made, in light of the circumstances under which~~
15 ~~they were made, not misleading; or~~
16 3. Knowingly understate or overstate a life expectancy
17 with the intent to defraud ~~To engage in any transaction,~~
18 ~~practice, or course of business which operates or would~~
19 ~~operate as a fraud or deceit upon a person.~~
20 (2) A person who violates any provision of this
21 section commits:
22 (a) A felony of the third degree, punishable as
23 provided in s. 775.082, s. 775.083, or s. 775.084, if the
24 insurance policy involved is valued at any amount less than
25 \$20,000.
26 (b) A felony of the second degree, punishable as
27 provided in s. 775.082, s. 775.083, or s. 775.084, if the
28 insurance policy involved is valued at \$20,000 or more, but
29 less than \$100,000.
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1 (c) A felony of the first degree, punishable as
2 provided in s. 775.082, s. 775.083, or s. 775.084, if the
3 insurance policy involved is valued at \$100,000 or more.

4 Section 28. Section 626.99278, Florida Statutes, is
5 amended to read:

6 626.99278 Viatical provider anti-fraud plan.--Every
7 licensed viatical settlement provider ~~and viatical settlement~~
8 ~~broker~~ must adopt an anti-fraud plan and file it with the
9 Division of Insurance Fraud of the department ~~on or before~~
10 ~~December 1, 2000~~. Each anti-fraud plan shall include:

11 (1) A description of the procedures for detecting and
12 investigating possible fraudulent acts and procedures for
13 resolving material inconsistencies between medical records and
14 insurance applications.†

15 (2) A description of the procedures for the mandatory
16 reporting of possible fraudulent insurance acts to the
17 Division of Insurance Fraud of the department.†

18 (3) A description of the plan for anti-fraud education
19 and training of its underwriters or other personnel.† ~~and~~

20 (4) A written description or chart outlining the
21 organizational arrangement of the anti-fraud personnel who are
22 responsible for the investigation and reporting of possible
23 fraudulent insurance acts, and investigating unresolved
24 material inconsistencies between medical records and insurance
25 applications.

26 (5) A process by which the provider will perform
27 initial and continuing review of the accuracy of its life
28 expectancies, whether such life expectancies are performed in
29 house or by a contracted life expectancy provider, and ensure
30 compliance with s. 626.99275(1) by its life expectancy
31 providers.

1 Section 29. Section 626.9928, Florida Statutes, is
2 amended to read:

3 626.9928 Acquisitions.--Acquisition of interest in a
4 viatical settlement provider ~~or viatical settlement broker~~ is
5 subject to s. 628.4615.

6 Section 30. Section 626.99285, Florida Statutes, is
7 amended to read:

8 626.99285 Applicability of insurance code.--In
9 addition to other applicable provisions cited in the insurance
10 code, the office or department, as appropriate, has the
11 authority granted under ss. 624.310, 626.901, and 626.989 to
12 regulate viatical settlement providers, viatical settlement
13 brokers, ~~viatical settlement sales agents,~~ viatical settlement
14 contracts, ~~viatical settlement purchase agreements,~~ and
15 viatical settlement transactions.

16 Section 31. Section 626.99295, Florida Statutes, is
17 amended to read:

18 626.99295 Grace period.--Any person who, on July 1,
19 2005, is effectuating a viatical settlement purchase agreement
20 made before July 1, 2005, under provisions of law in effect
21 before such date, which viatical settlement purchase agreement
22 was not registered pursuant to chapter 517, must proceed
23 within 30 days after July 1, 2005, to conclude all viatical
24 settlement purchase transactions in progress, provided, if
25 funds have not been matched with a viaticated policy, such
26 funds, or any unmatched portion of such funds, shall be
27 returned to the viatical settlement purchaser within 30 days
28 after July 1, 2005. The provider may not solicit, negotiate,
29 advertise, or effectuate new viatical settlement purchase
30 agreements after July 1, 2005. An unlicensed viatical
31 ~~settlement provider or viatical settlement broker that was~~

1 ~~legally transacting business in this state on June 30, 2000,~~
2 ~~may continue to transact such business, in the absence of any~~
3 ~~orders by the office, department, or the former Department of~~
4 ~~Insurance to the contrary, until the office or department, as~~
5 ~~applicable, approves or disapproves the viatical settlement~~
6 ~~provider's application for licensure if the viatical~~
7 ~~settlement provider or viatical settlement broker filed with~~
8 ~~the former department an application for licensure no later~~
9 ~~than August 1, 2000, and if the viatical settlement provider~~
10 ~~or viatical settlement broker complies with all other~~
11 ~~provisions of this act. Any form for which former department~~
12 ~~approval was required under this part must have been filed by~~
13 ~~August 1, 2000, and may continue to be used until disapproved~~
14 ~~by the office or department.~~

15 Section 32. Sections 626.9917, 626.9918, 626.99235,
16 626.99236, and 626.99277, Florida Statutes, are repealed.

17 Section 33. This act shall take effect July 1, 2005.

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STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
COMMITTEE SUBSTITUTE FOR
Senate Bill 2412

- o Eliminates the requirement for a separate viatical settlement broker license because such activities will be performed by a licensed life insurance agent who is self appointed.
- o Provides grounds for the Department of Financial Services (DFS) to deny an application for or suspend or revoke a license for specified persons involved in viatical settlement contract transactions.
- o Mandates criminal penalties for persons, in issuing a life expectancy, to receive compensation which is contingent upon providing a designated life expectancy, to knowingly understate or overstate a life expectancy with the intent to defraud, or to issue a life expectancy that is not based upon generally accepted medical or actuarial practices.
- o Clarifies that the Office of Insurance Regulation (OIR) regulates viatical settlement purchase agreements prior to the effective date of the bill and specifies that the OIR may deny a license for a viatical settlement provider.
- o Specifies requirements for a viatical settlement provider to maintain his or her license and the process by which such providers handle in-process viatical settlement purchase agreements prior to the effective date of the bill.
- o Eliminates definitions, deletes obsolete references, and makes changes in Part X of chapter 626, F.S. (Viatical Settlement law) to conform to the security requirements of the Florida Securities and Investor Protection Act.