

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  
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  
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  
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  
111 settlement contract or an insurance policy;

112 2. The underwriting of a viatical settlement contract or  
113 an 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  
118 in accordance with the terms of a viatical settlement contract  
119 or an insurance policy;

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

131 the prospective insured has undergone a life expectancy  
 132 evaluation 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  
 140 of 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  
 145 insurance regulatory official of another jurisdiction a document  
 146 that 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  
 149 of 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  
177 in the commission of or conspiring to commit an act or omission  
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  
 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  
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  
243 an 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,  
259 on behalf of a viator and for a fee, commission, or other  
260 valuable 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  
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  
 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  
 305 who, 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  
 309 association, or credit union, ~~or other licensed lending~~  
 310 ~~institution~~ that takes an assignment of a life insurance policy  
 311 as collateral for 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.

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

352           2. For each of the most recent 5 years, the total number  
353 of 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  
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  
 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  
 414 the 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  
421 nolo contendere to, any felony, or a misdemeanor involving fraud  
422 or moral turpitude, regardless of whether a judgment of  
423 conviction 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.

439 (l) 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  
 450 required; 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  
 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  
480 statement before or concurrently with the viator's execution of  
481 a viatical settlement contract, with the viator retaining the  
482 duplicate 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  
 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)~~~~(12)~~ and 626.9912(1) that a viatical settlement  
 524 provider doing business from this state must obtain a viatical  
 525 settlement license from the office. As used in this subsection,  
 526 the term "doing business from this state" includes effectuating  
 527 viatical settlement contracts from offices in this state,  
 528 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.

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) ~~To~~ Knowingly enter into, broker, or otherwise deal in  
568 a 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) ~~¶~~ 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) ~~¶~~ 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) ~~¶~~ Knowingly or intentionally facilitate the change of  
 583 state of residency of a viator to avoid the provisions of this  
 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

599 | in s. 775.082, s. 775.083, or s. 775.084, if the insurance  
 600 | policy 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  
 606 | in s. 775.082, s. 775.083, or s. 775.084, if the insurance  
 607 | policy involved is valued at \$100,000 or more.

608 | Section 10. Section 626.99276, Florida Statutes, is  
 609 | created 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  
 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  
 631 change of ownership or beneficiary of a policy, the insurer  
 632 shall respond in writing within 30 calendar days confirming that  
 633 the change has been effectuated or specifying the reasons why  
 634 the 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  
 640 amended to read:

641 626.99278 Viatical provider anti-fraud plan.—

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  
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  
 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  
728 income which is unexpected by the viator and which impairs his

729 or her 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~~

CS/HB 445

2016

755 ~~grounds of fraud.~~

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

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.