

CHAPTER 99-212

Committee Substitute for Committee Substitute for Senate Bill No. 1242

An act relating to the regulation of insurance and investments in insurance products industry; amending s. 626.9911, F.S.; defining “viatical settlement purchaser,” “viatical settlement purchase agreement,” and “viatical settlement sales agent”; revising definitions of the terms “viatical settlement broker,” “viatical settlement contract,” “viatical settlement provider,” “related provider trust,” and “viator”; creating s. 626.99181, F.S.; requiring disclosure of certain information regarding viatical settlement broker fees; amending s. 626.9919, F.S.; requiring viatical settlement sales agents to give notice of change of certain information; amending s. 626.992, F.S.; requiring viatical settlement sales agents to be licensed by the Department of Insurance; amending s. 626.9922, F.S.; revising requirements for examination; amending s. 626.99235, F.S.; revising requirements for disclosure to viatical settlement purchasers and providing for disclosure forms to be adopted by the department; amending s. 626.9925; revising rulemaking authority of the department; amending s. 626.9926, F.S.; providing that viatical settlement purchase agreement rates are not regulated; amending s. 626.9927, F.S.; including viatical settlement purchase agreements; creating s. 626.99272, F.S.; providing for cease and desist orders; providing for administrative fines; creating s. 626.99275, F.S.; prohibiting certain practices; creating s. 626.99277, F.S.; prohibiting false representations; amending s. 626.9929, F.S.; establishing a grace period for viatical settlement sales agents transacting business in this state; amending s. 626.993, F.S.; providing an exemption for nonresident viators with dependent children; providing for future repeal of s. 626.993, F.S.; providing an effective date.

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

Section 1. Section 626.9911, Florida Statutes, 1998 Supplement, is amended to read:

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

- (1) “Department” means the Department of Insurance.
- (2) “Independent third-party trustee or escrow agent” means an attorney, certified public accountant, financial institution, or other person providing escrow services under the authority of a regulatory body. The term does not include any person associated, affiliated, or under common control with a viatical settlement provider or viatical settlement broker.
- (3) “Person” has the meaning specified in s. 1.01.
- (4) “Viatical settlement broker” means a person who, on behalf of a viator and for a fee, commission, or other valuable consideration, offers or attempts

to negotiate viatical settlement contracts between a viator resident in this state and one or more viatical settlement providers. Notwithstanding the manner in which the viatical settlement broker is compensated, a viatical settlement broker is deemed to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the best interest of the viator. The term does not include an attorney, licensed Certified Public Accountant, or investment adviser lawfully registered with the Department of Banking and Finance under chapter 517 financial planner, or person acting under a power of attorney from the viator, who is retained to represent the viator and whose compensation is paid directly solely by or at the direction and on behalf of the viator without regard to whether a viatical settlement contract is effected.

(5) "Viatical settlement contract" means a written ~~agreement~~ settlement entered into between a viatical settlement provider, or its related provider trust, and a viator. The agreement must establish the terms under which the viatical settlement provider will pay compensation or anything of value, which compensation or value is less than the expected death benefit of the insurance policy or certificate, in return for the viator's assignment, transfer, sale, devise, or bequest of the death benefit or ownership of all or a portion of the insurance policy or certificate of insurance to the viatical settlement provider. A viatical settlement contract also includes a contract for a loan or other financial transaction secured primarily by an individual or group life insurance policy, other than a loan by a life insurance company pursuant to the terms of the life insurance contract, or a loan secured by the cash value of a policy.

(6) "Viatical settlement provider" means a person who, in this state, ~~or from this state, or with a resident of this state,~~ effectuates ~~enters into~~ a viatical settlement contract ~~with a viator~~. The term does not include:

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

(b) A life and health insurer that has lawfully issued a life insurance policy that provides accelerated benefits to terminally ill policyholders or certificate holders; or

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

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

(e) A viatical settlement provider, who from this state, enters into a viatical settlement purchase agreement with a purchaser who is resident of a state, other than Florida, which has enacted statutes or promulgated regulations governing viatical settlement purchase agreements. Such viatical settlement purchase agreements shall be governed in the effectuation of that viatical settlement purchase agreement, under the statutes and regula-

tions governing viatical settlement purchase agreements in the purchaser's state of residence.

(f) A viatical settlement provider who, from this state, enters into a viatical settlement contract with a viator who is resident of a state, other than Florida, which has enacted statutes or promulgated regulations governing viatical settlement contracts. Such viatical settlement contracts shall be governed in the effectuation of that viatical settlement contract, under the statutes and regulations governing viatical settlement contracts in the viator's state of residence.

(g) A viator in this state.

(h) A viatical settlement purchaser.

(7) "Viator" means the owner of a life insurance policy or a certificate-holder under a group policy insuring the life of an individual with a natural person who has a catastrophic or life-threatening illness or condition and who enters or seeks to enter into a viatical settlement contract has the right to assign, transfer, sell, devise, or bequeath the benefits of his or her life insurance policy. This term does not include a viatical settlement purchaser or a viatical settlement provider or any person acquiring a policy or interest in a policy from a viatical settlement provider, nor does it include an independent third-party trustee or escrow agent.

(8) "Related provider trust" means a trust established by a viatical settlement provider for the sole purpose of entering into or owning viatical settlement contracts. This term does not include an independent third-party trustee or escrow agent or a trust that does not enter into agreements with a viatical settlement purchaser. A related provider trust shall be subject to all provisions of this act that apply to the viatical settlement provider who established the related provider trust, except s. 626.9912, which shall not be applicable. A viatical settlement provider may establish no more than one related provider trust, and the sole trustee of such related provider trust shall be the viatical settlement provider licensed under s. 626.9912. The name of the licensed viatical settlement provider shall be included within the name of the related provider trust.

(9) "Viatical settlement purchase agreement" means a contract or agreement, entered into by a viatical settlement purchaser, to which the viator is not a party, to purchase a life insurance policy or an interest in a life insurance policy, which is entered into for the purpose of deriving an economic benefit.

(10) "Viatical settlement purchaser" means a person, other than a licensee under this part, an accredited investor as defined in Rule 501, Regulation D of the Securities Act Rules, or a qualified institutional buyer as defined by Rule 144(a) of the Federal Securities Act, or a special purpose entity which is created solely to act as a financing source for the viatical settlement provider, who gives a sum of money as consideration for a life insurance policy or an interest in the death benefits of a life insurance policy which has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit. The above reference to Rule

501, Regulation D and Rule 144(a) of the Federal Securities Act are used strictly for defining purposes and shall not be interpreted in any other manner.

(11) “Viatical settlement sales agent” means a person other than a licensed viatical settlement provider who arranges the purchase through a viatical settlement purchase agreement of a life insurance policy or an interest in a life insurance policy.

Section 2. Section 626.99181, Florida Statutes, is created to read:

626.99181 Viatical settlement broker’s compensation.—A viatical settlement broker shall disclose to a prospective viator the amount and method of calculating the broker’s compensation. The term “compensation” includes anything of value paid or given to a viatical settlement broker for the placement of a policy.

Section 3. Section 626.9919, Florida Statutes, is amended to read:

626.9919 Notice of change of address or name; viatical settlement provider licensees, and broker licensees, and viatical settlement sales agent licensees.—Each viatical settlement provider licensee, and each viatical settlement broker licensee, and viatical settlement sales agent licensee must provide the department at least 30 days’ advance notice of any change in the licensee’s name, residence address, principal business address, or mailing address.

Section 4. Section 626.992, Florida Statutes, is amended to read:

626.992 Use of viatical settlement licensed brokers, and providers, and viatical settlement sales agents required.—

(1) A licensed viatical settlement provider may not use any person to perform the functions of a viatical settlement broker as defined in this act unless such person holds a current, valid license as a viatical settlement broker. Salaried individuals employed by viatical settlement providers shall engage in viatical settlement broker activities only when accompanied by a viatical settlement broker who holds a current valid license issued under this act. A viatical settlement provider may not use any person to perform the functions of a viatical settlement sales agent unless the person holds a current, valid license as provided in subsection (4).

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

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

(4) A person may not perform the functions of a viatical settlement sales agent unless licensed as a life agent as defined in s. 626.051 and as provided in this chapter.

Section 5. Section 626.9922, Florida Statutes, is amended to read:

626.9922 Examination.—

(1) The department may examine the business and affairs of any licensee or applicant for a license. The department may order any licensee or applicant to produce any records, books, files, advertising and solicitation materials, or other information and may take statements under oath to determine whether the licensee or applicant is in violation of the law or is acting contrary to the public interest. The expenses incurred in conducting any examination or investigation must be paid by the licensee or applicant. Examinations and investigations must be conducted as provided in chapter 624, and licensees are subject to all applicable provisions of the insurance code.

(2) All accounts, records, documents, files, and other information relating to all transactions of viatical settlement contracts or viatical settlement purchase agreements must be maintained by the licensee for a period of at least 3 years after the death of the insured viator and must be available to the department for inspection during reasonable business hours.

Section 6. Section 626.99235, Florida Statutes, 1998 Settlement, is amended to read:

626.99235 Disclosures to viatical settlement purchasers ~~investors~~; misrepresentations.—

(1) No person shall misrepresent the nature of the return or the duration of time to obtain the return of any investment related to one or more viatical settlements sold by a viatical settlement provider or related provider trust.

(2) The viatical settlement provider and the viatical settlement sales agent, themselves ~~itself~~ or through another person, shall provide in writing the following disclosures to any viatical settlement purchaser ~~investor~~ or purchaser ~~investor~~ prospect:

(a) That the return represented as being available under the viatical settlement purchase agreement ~~investment~~ is directly tied to the projected life span ~~or date of death~~ of one or more insureds. ~~viators~~;

(b) If a return is represented, the disclosure shall indicate the projected life span ~~or date of death~~ of the insured or insureds ~~viator or viators~~ whose life or lives are tied to the return.

(c) If required by the terms of the viatical settlement purchase agreement ~~investment contract~~, that the viatical settlement purchaser ~~investor~~ ~~may~~ be responsible for the payment of insurance premiums on the life of the insured, ~~viator~~ or late or surrender fees, or other costs related to the life insurance policy on the life of the insured or insureds ~~viator or viators~~ which may reduce the return.

(d) The amount of any trust fees, commissions, deductions, or other expenses, if any, to be charged to the viatical settlement purchaser ~~investor~~.

(e) The name and address of the person responsible for tracking the insured.

(f) That group policies may contain limitations or caps in the conversion rights, that additional premiums may have to be paid if the policy is converted, and that the party responsible for the payment of such additional premiums shall be identified.

(g) That the life expectancy and rate of return are only estimates and cannot be guaranteed.

(h) That the purchase of a viatical settlement contract should not be considered a liquid purchase, since it is impossible to predict the exact timing of its maturity and the funds may not be available until the death of the insured.

(i) The name and address of the person with the responsibility for paying the premium until the death of the insured.

The written disclosure required under this subsection shall be conspicuously displayed in any viatical settlement purchase investment agreement, and in any solicitation material furnished to the viatical settlement purchaser investor by such viatical settlement provider, related provider trust, or person, and shall be in contrasting color and in not less than 10-point type or no smaller than the largest type on the page if larger than 10-point type. The department is authorized to adopt by rule the disclosure form to be used. The disclosures need not be furnished in an invitation to inquire, the objective of which is to create a desire to inquire further about entering into a viatical settlement purchase agreement. The invitation to inquire may not quote rates of return, may not include material attendant to the execution of any specific viatical settlement purchase agreement, and may not relate to any specific viator.

Section 7. Section 626.9925, Florida Statutes, is amended to read:

626.9925 Rules.—The department may adopt rules to implement this act, including rules establishing standards for evaluating advertising by licensees and rules providing for the collection of data and recordkeeping requirements relating to executed viatical settlement contracts and viatical settlement purchase agreements.

Section 8. Section 626.9926, Florida Statutes, is amended to read:

626.9926 Rate regulation not authorized.—Nothing in this act shall be construed to authorize the department to directly or indirectly regulate the amount paid as consideration for entry into a viatical settlement contract or viatical settlement purchase agreement.

Section 9. Subsection (1) of section 626.9927, Florida Statutes, is amended to read:

626.9927 Unfair trade practices; cease and desist; injunctions; civil remedy.—

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

Section 10. Section 626.99272, Florida Statutes, is created to read:

626.99272 Cease and desist orders and fines.—

(1) The department may issue a cease and desist order upon a person that violates any provision of this part, any rule or order adopted by the department, or any written agreement entered into with the department.

(2) When the department finds that such an action presents an immediate danger to the public which requires an immediate final order, it may issue an emergency cease and desist order reciting with particularity the facts underlying such findings. The emergency cease and desist order is effective immediately upon service of a copy of the order on the respondent and remains effective for 90 days. If the department begins nonemergency cease and desist proceedings under subsection (1), the emergency cease and desist order remains effective, absent an order by an appellate court of competent jurisdiction pursuant to ss. 120.68, until the conclusion of proceedings under ss. 120.569 and 120.57.

(3) The department may impose and collect an administrative fine not to exceed \$10,000 for each nonwillful violation and \$25,000 for each willful violation of any provision of this part.

Section 11. Section 626.99275, Florida Statutes, is created to read:

626.99275 Prohibited practices.—It is unlawful for any person:

(1) To knowingly enter into a viatical settlement contract the subject of which is a life insurance policy that was obtained by means of a false, deceptive, or misleading application for the life insurance policy.

(2) In the solicitation or sale of a viatical settlement purchase agreement:

(a) To employ any device, scheme, or artifice to defraud;

(b) To obtain money or property by means of an untrue statement of a material fact or by any omission to state a material fact necessary in order to make the statements made, in light of the circumstances under which they were made, not misleading; or

(c) To engage in any transaction, practice, or course of business which operates or would operate as a fraud or deceit upon a person.

Section 12. Section 626.99277, Florida Statutes, is created to read:

626.99277 False representations; deceptive words.—

(1) It is unlawful for a person in the advertisement, offer, or sale of a viatical settlement purchase agreement to misrepresent that such an agree-

ment has been guaranteed, sponsored, recommended, or approved by the state, or any agency or officer of the state or by the United States or any agency or officer of the United States.

(2) It is unlawful for a person in conjunction with the sale of a viatical settlement purchase agreement to directly or indirectly misrepresent that the person has been sponsored, recommended, or approved, or that his or her abilities or qualifications have in any respect been passed upon, by this state or any other state, or any agency or officer thereof, or by the United States or any agency or officer thereof.

(3) It is unlawful for a person in the offer or sale of a viatical settlement purchase agreement to obtain money or property by:

(a) A misrepresentation that the viatical settlement purchase agreement purchased, offered, or sold is guaranteed, sponsored, recommended, or approved by this state or any other state, or any agency or officer thereof, or by the United States or any agency or officer thereof.

(b) A misrepresentation that the person is sponsored, recommended, or approved, or that the person's abilities or qualifications have in any respect been passed upon, by this state or any other state, or any agency or officer thereof, or by the United States or any agency or officer thereof.

(4) Neither subsection (1) nor subsection (2) may be construed to prohibit a statement that the person is licensed or appointed under this part if such a statement is required by this part or rules adopted under this part, if the statement is true in fact, and if the effect of the statement is not misrepresented.

(5) A person may not represent that a viatical settlement purchase agreement is guaranteed by any insurance guaranty fund.

(6) A person may not represent that the investment in a viatical settlement purchase agreement is "guaranteed," that the principal is "safe," or that the investment is free of risk.

Section 13. Section 626.9929, Florida Statutes, is amended to read:

626.9929 Grace period.—A viatical settlement sales agent provider ~~or viatical settlement broker~~ that was transacting business in this state on June 30, ~~1999~~ 1996, may continue to transact such business, in the absence of any orders by the department to the contrary, until the department approves or disapproves the sales agent's provider's or broker's application for licensure if the ~~sales agent provider or broker~~ files with the department no later than November 1, 1999, an application for licensure ~~and all forms currently in use no later than November 1, 1996,~~ and if the sales agent provider or broker complies with all other provisions of this act.

Section 14. Section 626.993, Florida Statutes, is amended to read:

626.993 Viators with dependent children.—

(1) Before a viatical settlement provider may enter into a viatical settlement with a viator, the viatical settlement provider must ascertain if the viator has any dependent children. If the viator has any dependent children, the viator may not viaticate more than 50 percent of the face value of the policy.

(2) A contract entered into with a viator who is a resident of a state other than Florida which has not enacted statutes or promulgated regulations governing viatical settlement contracts is not subject to this section.

Section 15. Section 626.993, Florida Statutes, as amended by this act, is repealed June 1, 2000.

Section 16. This act shall take effect upon becoming a law.

Approved by the Governor May 26, 1999.

Filed in Office Secretary of State May 26, 1999.