

## Committee Substitute for Senate Bill No. 1956

An act relating to viatical settlements; amending s. 626.9911, F.S.; redefining the terms “viatical settlement contract,” “viatical settlement provider,” “viator,” “related provider trust,” and “viatical settlement purchaser”; defining the terms “viaticated policy,” “related form,” “special purpose entity,” and “financing entity”; amending s. 626.9912, F.S.; requiring additional information for license applications; amending s. 626.9921, F.S.; providing for additional forms; amending s. 626.9922, F.S.; revising recordkeeping time requirements; defining the term “home office”; providing that records be made available; creating s. 626.99236, F.S.; providing for disclosure to viatical settlement purchasers; providing for rescission of agreements; amending s. 626.9924, F.S.; providing for notice of viaticated policies; requiring notice of transfer of ownership or change in beneficiary within a specified period of time; creating s. 626.99245, F.S.; providing for the regulation of interstate conflicts; amending s. 626.9925, F.S.; providing additional rulemaking authority; amending s. 626.99275, F.S.; providing criminal penalties; creating s. 626.99278, F.S.; requiring the adoption of an anti-fraud plan; creating s. 626.99285, F.S.; providing for the applicability of the Insurance Code; creating s. 626.99287, F.S.; providing for the contestability of viaticated policies; creating 626.99295, F.S.; providing for a grace period for unlicensed viatical settlement providers and viatical settlement brokers; amending s. 626.9915, F.S.; allowing a provider whose license is suspended or revoked to continue to maintain and service viaticated policies if the department approves; providing an appropriation; providing an effective date.

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

Section 1. Subsections (5), (6), (7), (8), and (10) of section 626.9911, Florida Statutes, are amended and subsections (12), (13), (14), and (15) are added to that section to read:

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

(5) “Viatical settlement contract” means a written agreement entered into between a viatical settlement provider, or its related provider trust, and a viator. The viatical settlement contract includes an agreement to transfer ownership or change the beneficiary designation of a life insurance policy at a later date, regardless of the date that compensation is paid to the 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, from this state, or with a resident of this state, effectuates a viatical settlement contract. 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 certificateholders; 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 regulations 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.~~

~~(e)(g)~~ A viator in this state.

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

(g) A financing entity.

(7) “Viator” means the owner of a life insurance policy or a certificateholder under a group policy ~~insuring the life of an individual with a catastrophic or life-threatening illness or condition~~ who enters or seeks to enter into a viatical settlement contract. 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 ~~viator 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.

(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 equitable or legal 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 references 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. Any person who claims to be an accredited investor shall sign an affidavit stating that he or she is an accredited investor, the basis of that claim, and that he or she understands that as an accredited investor he or she will not be entitled to certain protections of the Viatical Act. This affidavit must be kept with other documents required to be maintained by this act.

(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.

(12) “Viaticated policy” means a life insurance policy, or a certificate under a group policy, which is the subject of a viatical settlement contract.

(13) “Related form” means any form, created by or on behalf of a licensee, which a viator or viatical settlement purchaser is required to sign or initial. The forms include, but are not limited to, a power of attorney, a release of medical information form, a suitability questionnaire, a disclosure document, or any addendum, schedule, or amendment to a viatical settlement contract or viatical settlement purchase agreement considered necessary by a provider to effectuate a viatical settlement transaction.

(14) “Special purpose entity” means an entity established by a licensed viatical settlement provider, which may be a corporation, partnership, trust, or other similar entity formed solely to act as a vehicle to permit a lender to the provider to access institutional capital markets for the provider. A special purpose entity shall not enter into a viatical settlement contract or a viatical settlement purchase agreement.

(15) "Financing entity" means an underwriter, placement agent, lender, purchaser of securities, or purchaser of a policy or certificate from a viatical settlement provider, credit enhancer, or any person that may be a party to a viatical settlement contract and that has direct ownership in a policy or certificate that is the subject of a viatical settlement contract, but whose sole activity related to the transaction is providing funds or credit enhancement to effect the viatical settlement and who has an agreement in writing with a licensed viatical settlement provider to act as a participant in a financing transaction. The term does not include a nonaccredited investor or other natural person.

Section 2. Subsection (1), paragraph (f) of subsection (3), subsection (4), and paragraph (b) of subsection (5) of section 626.9912, Florida Statutes, are amended to read:

626.9912 Viatical settlement provider license required; application for license.—

(1) ~~After July 1, 1996,~~ A person may not perform the functions of a viatical settlement provider as defined in this act or enter into or solicit a viatical settlement contract without first having obtained a license from the department.

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

(f) All applications, viatical settlement contract forms, viatical settlement purchase agreement forms, escrow forms rating manuals, and other related forms proposed to be used by the applicant.

(4) The department may not issue a license to an entity other than a natural person if it is not satisfied that all officers, directors, employees, stockholders, ~~and partners, and any other persons~~ who exercise or have the ability to exercise effective control of the entity or who have the ability to influence the transaction of business by the entity meet the standards of this act and have not violated any provision of this act or rules of the department related to the business of viatical settlement contracts or viatical settlement purchase agreements.

(5) Upon the filing of a sworn application and the payment of the license fee, the department shall investigate each applicant and may issue the applicant a license if the department finds that the applicant:

(b) Is competent and trustworthy and intends to act in good faith in the business authorized by the license applied for; ~~however, for purposes of this act, including this paragraph, a person shall not be deemed to be incompetent and untrustworthy solely for any felony committed more than 5 years before licensure if the person has had his or her civil rights restored by the Governor and Cabinet with respect to such felony.~~

Section 3. Section 626.9921, Florida Statutes, is amended to read:

626.9921 Filing of forms; required procedures; approval.—

(1) A viatical settlement contract form, viatical settlement purchase agreement form, escrow form, or related form may be used in this state only after the viatical settlement provider or any related provider trust has filed the form with the department and only after the form has been approved by the department.

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

(3) If a viatical settlement provider elects to use a related provider trust in accordance with this act, the viatical settlement provider shall file notice of its intention to use a related provider trust with the department, including a copy of the trust agreement of the related provider trust. The organizational documents of the trust must be submitted to and approved by the department before the transacting of business by the trust.

(4) The department may adopt, by rule, standardized forms to be used by licensees, at the licensee's option in place of separately approved forms.

Section 4. Subsection (2) of section 626.9922, Florida Statutes, is amended and subsections (3), (4), and (5) are added to that section 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, books and records, documents, files, contracts, 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 and must be available to the department for inspection during reasonable business hours.

(3) All such records or accurate copies of such records must be maintained at the licensee's home office. As used in this section, the term "home office" means the principal place of business and any other single storage facility, the street address of which shall be disclosed to the department

within 20 days after its initial use, or within 20 days of the effective date of this subsection.

(4) The originals of records required to be maintained under this section must be made available to the department for examination at the department's request.

Section 5. Section 626.99236, Florida Statutes, is created to read:

626.99236 Further disclosures to viatical settlement purchasers.—

(1) No later than 5 days prior to the 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 purchaser, the viatical settlement provider, itself or through another person, shall provide in writing the following disclosures to any viatical settlement purchaser:

(a) All the life expectancy certifications obtained by the provider.

(b) The name and address of the insurance company, the policy number, and the date of original issue of the viaticated policy.

(c) The experience and qualifications of the person issuing the life expectancy certification, and that person's relationship to the viatical settlement provider, the viatical settlement broker, the viatical settlement sales agent, and the viator.

(d) The name and address of any person providing escrow services, and that person's relationship to the viatical settlement provider, the viatical settlement broker, the viatical settlement sales agent, and the viator.

(e) The type of life insurance policy offered or sold, including a statement as to whether the policy is whole life, term life, universal life, or a group policy certificate; a statement as to whether the policy is in lapse status or has lapsed in the last two years; and a statement as to whether the purchaser is entitled to benefits contained in the policy other than the death benefit of the policy.

(f) The procedure to be used by the provider to provide the status of the health condition of the insured to a purchaser.

(2) The viatical settlement purchase agreement is voidable by the purchaser at anytime within three days after the disclosures mandated by this section are received by the purchaser.

(3) At the time the disclosures in subsection (1) are made, the viatical settlement purchaser shall be advised to seek independent financial advice from a person not compensated by the viatical settlement provider or viatical settlement broker or the viatical settlement sales agent. The viatical settlement purchaser shall sign an affidavit that he or she has received the disclosures and understands their importance.

Section 6. Subsection (1) of section 626.9924, Florida Statutes, is amended, and subsections (7), (8), and (9) are added to that section to read:

626.9924 Viatical settlement contracts; procedures; rescission.—

(1) A viatical settlement provider entering into a viatical settlement contract with any viator must first obtain a witnessed document in which the viator consents to the viatical settlement contract, ~~acknowledges the catastrophic or life-threatening illness,~~ represents that he or she has a full and complete understanding of the viatical settlement contract and the benefits of the life insurance policy, releases his or her medical records, and acknowledges that he or she has entered into the viatical settlement contract freely and voluntarily.

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

(8) If the owner of the insurance policy is not the insured, the provider shall notify the insured that the policy has become the subject of a viatical settlement contract within 20 days after the transfer of rights under the contract.

(9) If the provider transfers ownership or changes the beneficiary of the insurance policy, the provider must communicate the initial change in ownership or beneficiary to the insured within 20 days after the change.

Section 7. Section 626.99245, Florida Statutes, is created to read:

626.99245 Conflict of regulation of viaticals.—

(1) A viatical settlement provider who from this state enters into a viatical settlement purchase agreement with a purchaser who is resident of another state that has enacted statutes or adopted regulations governing viatical settlement purchase agreements, shall be governed in the effectuation of that viatical settlement purchase agreement by the statutes and regulations of the purchaser's state of residence. If the state in which the purchaser is a resident has not enacted statutes or regulations governing viatical settlement purchase agreements, the provider shall give the purchaser notice that neither Florida nor his or her state regulates the transaction upon which he or she is entering. For transactions in these states, however, the viatical settlement provider is to maintain all records required as if the transactions were executed in Florida. However, the forms used in those states need not be approved by the department.

(2) A viatical settlement provider who from this state enters into a viatical settlement contract with a viator who is resident of another state that has enacted statutes or adopted regulations governing viatical settlement contracts shall be governed in the effectuation of that viatical settlement contract by the statutes and regulations of the viator's state of residence. If the state in which the viator is a resident has not enacted statutes or regulations governing viatical settlement agreements, the provider shall

give the viator notice that neither Florida nor his or her state regulates the transaction upon which he or she is entering. For transactions in those states, however, the viatical settlement provider is to maintain all records required as if the transactions were executed in Florida. The forms used in those states need not be approved by the department.

Section 8. Section 626.9925, Florida Statutes, is amended to read:

626.9925 Rules.—The department may adopt rules to administer ~~imple-~~ment this act, including rules establishing standards for evaluating advertising by licensees; and rules providing for the collection of data, for disclo-sures to viators or purchasers, and for the reporting of life expectancies; and rules defining terms used in this act and prescribing recordkeeping require-ments relating to executed viatical settlement contracts and viatical settlement purchase agreements.

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

626.99275 Prohibited practices; penalties.—

(1) It is unlawful for any person:

(a)(1) To knowingly enter into, broker, or otherwise deal in a viatical settlement contract the subject of which is a life insurance policy, knowing that the policy was obtained by presenting materially false information concerning any fact material to the policy or by concealing, for the purpose of misleading another, information concerning any fact material to the policy, where the viator or the viator's agent intended to defraud the policy's issuer that was obtained by means of a false, deceptive, or misleading application for the life insurance policy.

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

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

2.(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

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

(c) To knowingly engage in any transaction, practice, or course of business intending thereby to avoid the notice requirements of s. 626.9924(7).

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

(a) A felony of the third degree, punishable as provided in s. 775.082, s. 774.083, or s. 775.084, if the insurance policy involved is valued at any amount less than \$20,000.

(b) A felony of the second degree, punishable as provided in s. 775.082, s. 774.083, or s. 775.084, if the insurance policy involved is valued at \$20,000 or more, but less than \$100,000.

(c) A felony of the first degree, punishable as provided in s. 775.082, s. 774.083, or s. 775.084, if the insurance policy involved is valued at \$100,000 or more.

Section 10. Section 626.99278, Florida Statutes, is created to read:

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

(1) A description of the procedures for detecting and investigating possible fraudulent acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(2) A description of the procedures for the mandatory reporting of possible fraudulent insurance acts to the Division of Insurance Fraud of the department;

(3) A description of the plan for anti-fraud education and training of its underwriters or other personnel; and

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

Section 11. Section 626.99285, Florida Statutes, is created to read:

626.99285 Applicability of Insurance Code.—In addition to other applicable provisions cited in the Insurance Code, the department has the authority granted under ss. 624.310, 626.901, and 626.989 to regulate viatical settlement providers, viatical settlement brokers, viatical settlement sales agents, viatical settlement contracts, viatical settlement purchase agreements, and viatical settlement transactions.

Section 12. Section 626.99287, Florida Statutes, is created to read:

626.99287 Contestability of viaticated policies.—Except as hereinafter provided, if a viatical settlement contract is entered into within the 2-year period commencing with the date of issuance of the insurance policy or certificate to be acquired, the viatical settlement contract is void and unenforceable by either party. Notwithstanding this limitation, such a viatical settlement contract is not void and unenforceable if:

(1) The policy was issued upon the owner's exercise of conversion rights arising out of a group or term policy;

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

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

(4) The viatical settlement contract was entered into before July 1, 2000;

(5) The viator certifies by producing independent evidence to the viatical settlement provider that one or more of the following conditions have been met within the 2-year period;

(a)1. The viator or insured is diagnosed with an illness or condition that is either;

a. Catastrophic or life threatening; or

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

2. The condition was not known to the insured at the time the life insurance contract was entered into.

(b) The viator's spouse dies;

(c) The viator divorces his or her spouse;

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

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

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

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

(h) The viator experiences a significant decrease in income which is unexpected by the viator and which impairs his or her reasonable ability to pay the policy premium.

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

Section 13. Section 626.99295, Florida Statutes, is created to read:

626.99295 Grace period.—An unlicensed viatical settlement provider or viatical settlement broker that was legally transacting business in this state on June 30, 2000, 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 viatical settlement provider's application for licensure if the viatical settlement provider or viatical settlement broker files with the department an application for licensure no later than August 1, 2000, and if the viatical settlement provider or viatical settlement broker complies with all other provisions of this act. Any form for which department approval is required under this part must be filed by August 1, 2000, and may continue to be used until disapproved by the department.

Section 14. Subsection (1) of section 626.9915, Florida Statutes, is amended to read:

626.9915 Effect of suspension or revocation of viatical settlement provider license; duration of suspension; reinstatement.—

(1) When its license is suspended or revoked, the provider must proceed, immediately following the effective date of the suspension or revocation, to conclude the affairs it is transacting under its license. The provider may not solicit, negotiate, advertise, or effectuate new contracts. The department retains jurisdiction over the provider until all contracts have been fulfilled or canceled or have expired. A provider whose license is suspended or revoked may continue to maintain and service viaticated policies subject to the approval of the department.

Section 15. Effective July 1, 2000, the sum of \$250,000 is appropriated for the 2000-2001 fiscal year from the Insurance Commissioner's Regulatory Trust Fund to the Department of Insurance to fund four positions for the purpose of carrying out the provisions of this act.

Section 16. This act shall take effect July 1, 2000.

Approved by the Governor June 20, 2000.

Filed in Office Secretary of State June 20, 2000.