

Committee Substitute for Senate Bill No. 2412

An act relating to viatical settlements; amending s. 517.021, F.S.; revising and providing definitions; creating s. 517.072, F.S.; specifying nonapplication of certain exemptions to viatical settlement investments; specifying the offering of a viatical settlement investment as not an exempt transaction under certain provisions of law; amending s. 517.081, F.S.; authorizing the Financial Services Commission to adopt additional rules relating to securities registration; authorizing the commission to adopt rules establishing requirements and standards for disclosures and records relating to viatical settlement investments; creating s. 517.1215, F.S.; requiring the commission to adopt rules specifying requirements for certain investment advisors; requiring the commission to establish by rule rules of conduct and prohibited business practices for investment advisers and associated persons; providing requirements; creating s. 517.1217, F.S.; authorizing the commission to establish by rule rules of conduct and prohibited business practices for dealers and associated persons; providing requirements; amending s. 624.501, F.S.; including agents making an appointment under certain life insurance agent fee provisions; amending ss. 626.015, 626.112, 626.207, and 626.331, F.S., to conform; amending s. 626.611, F.S.; providing an additional ground for compulsory refusal, suspension, or revocation of certain licenses or appointments for transactions relating to viatical settlement contracts; amending s. 626.777, F.S., to conform; amending s. 626.7845, F.S.; prohibiting certain activities by a person relating to viatical settlement contracts unless he or she is a licensed life agent; amending s. 626.9911, F.S.; revising definitions; amending s. 626.9912, F.S., to conform; amending s. 626.9913, F.S.; specifying additional requirements for annual statements by viatical settlement provider licensees; providing an alternative bond provision for certain viatical settlement providers for a certain time period; prohibiting certain persons from levying upon certain assets or securities under certain circumstances; amending s. 626.9914, F.S.; including the authority to deny a license among the adverse actions the Office of Insurance Regulation may take against a viatical settlement provider for certain actions; amending s. 626.9916, F.S.; revising licensure requirements for viatical settlement brokers; providing for self-appointment; providing for transfers of appointments; providing for termination of licenses; specifying a fiduciary duty of viatical settlement brokers; prohibiting dividing or sharing compensation received by a life agent for certain activities under certain circumstances; creating s. 626.99175, F.S.; requiring registration to operate as a life expectancy provider; providing registration for requirements; requiring certain application information; requiring registered life expectancy providers to periodically file audits with the office; providing audit requirements; authorizing certain subsidiaries of life expectancy providers to operate as a provider under certain circumstances; prohibiting certain providers, brokers, and agents from owning or being an officer, director, or employee of

a life expectancy provider; requiring providers to provide the office with advance notice of certain changes; requiring providers to retain copies of certain information and documents; providing an exception; providing procedures for approval or denial of applications; specifying grounds for denial of an application; authorizing the office to assess administrative fines under certain circumstances; authorizing the office to place a provider on probation for a certain period; specifying certain activities violations; amending ss. 626.9919, 626.992, and 626.9921, F.S., to conform; amending s. 626.9922, F.S.; specifying office jurisdiction over certain viatical settlement purchase agreements; authorizing the office to refer certain cases to the United States Securities and Exchange Commission for administrative action under certain circumstances; providing application to life expectancy providers; amending ss. 626.99245, 626.9925, 626.9926, and 626.9927, F.S., to conform; amending s. 626.99275, F.S.; revising prohibited practices to apply to issuing life expectancies and change a viator's residency for certain purposes; providing a criminal penalty; amending s. 626.99278, F.S.; providing for application to registered life expectancy providers; requiring an anti-fraud plan to include a description of procedures used to perform life expectancy accuracy reviews; amending ss. 626.9928 and 626.99285, F.S., to conform; amending s. 626.99295, F.S.; revising application of a grace period for certain viatical settlement purchase agreements; repealing s. 626.9917, F.S., relating to denial, suspension, revocation, or nonrenewal of viatical settlement broker licenses; repealing s. 626.9918, F.S., relating to effect of suspension or revocation of viatical settlement broker licenses; repealing s. 626.99235, F.S., relating to disclosures to viatical settlement purchasers; repealing s. 626.99236, F.S., relating to further disclosures to viatical settlement purchasers; repealing s. 626.99277, F.S., relating to false representations; providing an effective date.

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

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

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

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

~~(21)~~(20) “Security” includes any of the following:

- (a) A note.
- (b) A stock.
- (c) A treasury stock.
- (d) A bond.
- (e) A debenture.
- (f) An evidence of indebtedness.
- (g) A certificate of deposit.
- (h) A certificate of deposit for a security.
- (i) A certificate of interest or participation.
- (j) A whiskey warehouse receipt or other commodity warehouse receipt.
- (k) A certificate of interest in a profit-sharing agreement or the right to participate therein.
- (l) A certificate of interest in an oil, gas, petroleum, mineral, or mining title or lease or the right to participate therein.
- (m) A collateral trust certificate.
- (n) A reorganization certificate.
- (o) A preorganization subscription.
- (p) Any transferable share.
- (q) An investment contract.
- (r) A beneficial interest in title to property, profits, or earnings.
- (s) An interest in or under a profit-sharing or participation agreement or scheme.
- (t) Any option contract which entitles the holder to purchase or sell a given amount of the underlying security at a fixed price within a specified period of time.
- (u) Any other instrument commonly known as a security, including an interim or temporary bond, debenture, note, or certificate.
- (v) Any receipt for a security, or for subscription to a security, or any right to subscribe to or purchase any security.
- (w) A viatical settlement investment.

(23) "Viatical settlement investment" means an agreement for the purchase, sale, assignment, transfer, devise, or bequest of all or any portion of

a legal or equitable interest in a viaticated policy as defined in chapter 626. The term does not include:

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

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

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

(d) The transfer or assignment of a viaticated policy to a bank, trust company, savings institution, insurance company, dealer, investment company as defined in the Investment Company Act of 1940, pension or profit-sharing trust, or qualified institutional buyer as defined in United States Securities and Exchange Commission Rule 144A, 17 C.F.R. 230.144A(a), or to an accredited investor as defined by Rule 501 of Regulation D of the Securities Act Rules, provided such transfer or assignment is not for the direct or indirect promotion of any scheme or enterprise with the intent of violating or evading any provision of this chapter.

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

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

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

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

517.081 Registration procedure.—

(7) If upon examination of any application the office shall find that the sale of the security referred to therein would not be fraudulent and would not work or tend to work a fraud upon the purchaser, that the terms of the sale of such securities would be fair, just, and equitable, and that the enterprise or business of the issuer is not based upon unsound business princi-

ples, it shall record the registration of such security in the register of securities; and thereupon such security so registered may be sold by any registered dealer, subject, however, to the further order of the office. In order to determine if an offering is fair, just, and equitable, the commission may by rule establish requirements and standards for the filing, content, and circulation of any preliminary, final, or amended prospectus and other sales literature and may by rule establish merit qualification criteria relating to the issuance of equity securities, debt securities, insurance company securities, real estate investment trusts, and other traditional and nontraditional investments, including, but not limited to, oil and gas investments. The criteria may include such elements as the promoter's equity investment ratio, the financial condition of the issuer, the voting rights of shareholders, the grant of options or warrants to underwriters and others, loans and other affiliated transaction, the use or refund of proceeds of the offering, and such other relevant criteria as the office in its judgment may deem necessary to such determination.

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

(a) Disclosures to purchasers of viatical settlement investments.

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

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

517.1215 Requirements, rules of conduct, and prohibited business practices for investment advisors and their associated persons.—

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

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

(b) Communications with clients and independent representatives.

(c) Requirements for investment advisors who have custody of pooled investments.

(d) Exceptions to the custody requirements.

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

(2) The commission shall by rule establish rules of conduct and prohibited business practices for investment advisors and their associated persons. In adopting the rules, the commission shall consider general industry standards as expressed in the rules and regulations of the various federal and self-regulatory agencies and regulatory associations, including, but not limited to, the United States Securities and Exchange Commission, the National

Association of Securities Dealers, and the North American Securities Administrators Association.

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

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

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

624.501 Filing, license, appointment, and miscellaneous fees.—The department, commission, or office, as appropriate, shall collect in advance, and persons so served shall pay to it in advance, fees, licenses, and miscellaneous charges as follows:

(7) Life insurance agents.

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

Appointment	\$42.00
State tax	12.00
County tax	6.00
Total	\$60.00

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

626.015 Definitions.—As used in this part:

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

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

626.112 License and appointment required; agents, customer representatives, adjusters, insurance agencies, service representatives, managing general agents.—

(1)

(b) Except as provided in subsection (6) or in applicable department rules, and in addition to other conduct described in this chapter with respect to particular types of agents, a license as an insurance agent, service representative, customer representative, or limited customer representative is required in order to engage in the solicitation of insurance. For purposes of this requirement, as applicable to any of the license types described in this section, the solicitation of insurance is the attempt to persuade any person to purchase an insurance product by:

1. Describing the benefits or terms of insurance coverage, including premiums or rates of return;
2. Distributing an invitation to contract to prospective purchasers;
3. Making general or specific recommendations as to insurance products;
4. Completing orders or applications for insurance products; ~~or~~
5. Comparing insurance products, advising as to insurance matters, or interpreting policies or coverages; or

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

However, an employee leasing company licensed pursuant to chapter 468 which is seeking to enter into a contract with an employer that identifies products and services offered to employees may deliver proposals for the purchase of employee leasing services to prospective clients of the employee leasing company setting forth the terms and conditions of doing business; classify employees as permitted by s. 468.529; collect information from prospective clients and other sources as necessary to perform due diligence on the prospective client and to prepare a proposal for services; provide and receive enrollment forms, plans, and other documents; and discuss or explain in general terms the conditions, limitations, options, or exclusions of insurance benefit plans available to the client or employees of the employee leasing company were the client to contract with the employee leasing company. Any advertising materials or other documents describing specific insurance coverages must identify and be from a licensed insurer or its licensed agent or a licensed and appointed agent employed by the employee leasing company. The employee leasing company may not advise or inform the prospective business client or individual employees of specific coverage provisions, exclusions, or limitations of particular plans. As to clients for which the employee leasing company is providing services pursuant to s. 468.525(4), the employee leasing company may engage in activities permitted by ss. 626.7315, 626.7845, and 626.8305, subject to the restrictions specified in those sections. If a prospective client requests more specific information concerning the insurance provided by the employee leasing company, the employee leasing company must refer the prospective business client to the insurer or its licensed agent or to a licensed and appointed agent employed by the employee leasing company.

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

626.207 Department rulemaking authority; waiting periods for applicants; penalties against licensees.—

(1) The department shall adopt rules establishing specific waiting periods for applicants to become eligible for licensure following denial, suspension, or revocation pursuant to s. 626.611, s. 626.621, s. 626.8437, s. 626.844, s. 626.935, ~~s. 626.9917~~, s. 634.181, s. 634.191, s. 634.320, s. 634.321, s. 634.422, s. 634.423, s. 642.041, or s. 642.043. The purpose of the waiting periods is to provide sufficient time to demonstrate reformation of character and rehabilitation. The waiting periods shall vary based on the type of conduct and the length of time since the conduct occurred and shall also be based on the probability that the propensity to commit illegal conduct has been overcome. The waiting periods may be adjusted based on aggravating and mitigating factors established by rule and consistent with this purpose.

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

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

626.331 Number of appointments permitted or required.—

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

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

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

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

(a) Commission of a fraudulent or dishonest act.

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

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

(d) Dealing in bad faith with viators.

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

626.777 Scope of this part.—This part applies only to agents of life insurers, ~~and to agents who are appointed by the same insurer as to both life insurance and health insurance, and agents who perform the functions of a viatical settlement broker as defined in s. 626.9911.~~

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

626.7845 Prohibition against unlicensed transaction of life insurance.—

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

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

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

1. As a consulting actuary advising an insurer; or

2. As to the counseling and advising of labor unions, associations, trustees, employers, or other business entities, the subsidiaries and affiliates of each, relative to their interests and those of their members or employees under insurance benefit plans; or

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

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

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

~~(1)~~(14) “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 entity that has direct ownership in a policy or certificate that is the subject of a viatical settlement

contract, but whose principal activity related to the transaction is providing funds or credit enhancement to effect the viatical settlement or the purchase of one or more viaticated viatical policies and who has an agreement in writing with one or more licensed viatical settlement providers to finance the acquisition of viatical settlement contracts. The term does not include a nonaccredited investor, ~~a viatical settlement purchaser~~, or other natural person. A financing entity may not enter into a viatical settlement contract.

~~(2)~~(1) “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) “Life expectancy” means an opinion or evaluation as to how long a particular person is to live, or relating to such person’s expected demise.

(4) “Life expectancy provider” means a person who determines, or holds himself or herself out as determining, life expectancies or mortality ratings used to determine life expectancies:

(a) On behalf of a viatical settlement provider, viatical settlement broker, life agent, or person engaged in the business of viatical settlements;

(b) In connection with a viatical settlement investment, pursuant to s. 517.021(22); or

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

(5)~~(2)~~ “Person” has the meaning specified in s. 1.01.

~~(6)~~(12) “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.

(7) “Related provider trust” means a titling trust or other trust established by a licensed viatical settlement provider or financing entity for the sole purpose of holding the ownership or beneficial interest in purchased policies in connection with a financing transaction. The trust must have a written agreement with a licensed viatical settlement provider or financing entity under which the licensed viatical settlement provider or financing entity is responsible for insuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files relating to viatical settlement transactions available to the office as if those records and files were maintained directly by the licensed viatical settlement provider. 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. 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.

~~(8)~~⁽¹³⁾ “Special purpose entity” means an entity established by a licensed viatical settlement provider or by a financing entity, which may be a corporation, partnership, trust, limited liability company, or other similar entity formed solely to provide, either directly or indirectly, access to institutional capital markets to a viatical settlement provider or financing entity. A special purpose entity may not obtain capital from any natural person or entity with less than \$50 million in assets and may shall not enter into a viatical settlement contract or a viatical settlement purchase agreement.

~~(9)~~⁽³⁾ “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 under chapter 517, who is retained to represent the viator and whose compensation is paid directly by or at the direction and on behalf of the viator.

~~(10)~~⁽⁴⁾ “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.

~~(11)~~ “Viatical settlement investment” has the same meaning as specified in s. 517.021.

~~(12)~~⁽⁵⁾ “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.

(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 viator in this state.

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

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

~~(13)~~⁽¹⁴⁾ “Viaticated policy” means a life insurance policy, or a certificate under a group policy, which is the subject of a viatical settlement contract.

~~(14)~~⁽⁶⁾ “Viator” means the owner of a life insurance policy or a certificateholder under a group policy, which policy is not a previously viaticated policy, 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)~~ “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. The term also includes purchases made by viatical settlement purchasers from any person other than the provider who effectuated the viatical settlement contract.~~

~~(9)~~ “Viatical settlement purchaser” means a ~~person 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 that has been or will be the subject of a viatical settlement contract, for the purpose of deriving an economic benefit, including purchases made from any person other than the provider who effectuated the viatical settlement contract or an entity affiliated with the provider. The term does not include 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, a special purpose entity, a financing entity, or a contingency insurer. 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 Settlement Act. This affidavit must be kept with other documents required to be maintained by this act.

(10) ~~“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 15. Paragraph (f) of subsection (3) of section 626.9912, Florida Statutes, is amended, present paragraph (g) of that subsection is redesignated as paragraph (h) and a new paragraph (g) is added to that subsection, and subsection (4) of that section is amended to read:

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

(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, and other related forms proposed to be used by the applicant.

(g) A general description of the method the viatical settlement provider will use in determining life expectancies, including a description of the applicant's intended receipt of life expectancies, the applicant's intended receipt of life expectancies, the applicant's intended use of life expectancy providers, and the written plan or plans of policies and procedures used to determine life expectancies.

(4) The office may not issue a license to an entity other than a natural person if it is not satisfied that all officers, directors, employees, stockholders, 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 commission related to the business of viatical settlement contracts ~~or viatical settlement purchase agreements~~.

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

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

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

(2) Annually, on or before March 1, the viatical settlement provider licensee shall file a statement containing information the commission requires and shall pay to the office a license fee in the amount of \$500. The annual statement shall include audited financial statements prepared in

accordance with generally accepted accounting principles by an independent certified public accountant as of the last day of the preceding calendar year. If the audited financial statement has not been completed, however, the licensee shall include in its annual statement an unaudited financial statement and an affidavit from an officer of the licensee stating that the audit has not been completed. In this event, the licensee shall submit the audited statement on or before June 1. The annual statement shall also provide the office with a report of all life expectancy providers who have provided life expectancies directly or indirectly to the viatical settlement provider for use in connection with a viatical settlement contract or a viatical settlement investment. A viatical settlement provider shall include in all statements filed with the office all information requested by the office regarding a related provider trust established by the viatical settlement provider. The office may require more frequent reporting. Failure to timely file the annual statement or to timely pay the license fee is grounds for immediate suspension of the license.

(3) To ensure the faithful performance of its obligations to its viators in the event of insolvency or the loss of its license, a viatical settlement provider licensee must deposit and maintain deposited in trust with the department securities eligible for deposit under s. 625.52, having at all times a value of not less than \$100,000; however, a viatical settlement provider licensed in this state prior to June 1, 2004, which has deposited and maintains continuously deposited in trust with the department securities in the amount of \$25,000 and which posted and maintains continuously posted a security bond acceptable to the department in the amount of \$75,000, has until June 1, 2005, to comply with the requirements of this subsection. As an alternative to meeting the \$100,000 deposit requirement, the provider may deposit and maintain deposited in trust with the department such securities in the amount of \$25,000 and post with the office a surety bond acceptable to the office in the amount of \$75,000.

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

(5) A judgment creditor or other claimant of a viatical settlement provider does not have the right to levy upon any of the assets or securities held in this state pursuant to this section.

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

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

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

- (a) Has made a misrepresentation in the application for the license;
- (b) Has engaged in fraudulent or dishonest practices, or otherwise has been shown to be untrustworthy or incompetent to act as a viatical settlement provider;

- (c) Demonstrates a pattern of unreasonable payments to viators;
- (d) Has been found guilty of, or has pleaded guilty or nolo contendere to, any felony, or a misdemeanor involving fraud or moral turpitude, regardless of whether a judgment of conviction has been entered by the court;
- (e) Has issued viatical settlement contracts that have not been approved pursuant to this act;
- (f) Has failed to honor contractual obligations related to the business of viatical settlement contracts;
- (g) Deals in bad faith with viators;
- (h) Has violated any provision of the insurance code or of this act;
- (i) Employs any person who materially influences the licensee's conduct and who fails to meet the requirements of this act; ~~or~~
- (j) No longer meets the requirements for initial licensure; or;
- (k) Obtains or utilizes life expectancies from life expectancy providers who are not registered with the office pursuant to this act.

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

626.9916 Viatical settlement broker license required; ~~application for license.~~—

(1) ~~After October 1, 2006~~ July 1, 1996, a person, other than a life agent licensed under this chapter, may not ~~in this state, from this state, or with a resident of this state~~ perform the functions of a viatical settlement broker ~~as defined in this act~~ without first having obtained a license from the department.

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

(3) Each natural person who on July 1, 2005, held a viatical settlement broker's license and self-appointment may, upon obtaining a life agent license on or before October 1, 2006, transfer an existing broker self-appointment to such license. In the application, the applicant must provide all of the following:

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

~~(b) A copy of the applicant's basic organizational documents, if any, including the articles of incorporation, articles of association, partnership agreement, trust agreement, or other similar documents, together with all amendments to such documents.~~

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

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

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

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

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

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

~~(4) All viatical settlement broker licenses shall terminate on October 1, 2006, and shall not be subject to continuation or renewal. Any natural person who is employed by or otherwise represents a viatical settlement broker licensee, which broker licensee is not a natural person, must also be licensed as a viatical settlement broker if such employee or other representative performs the functions of a viatical settlement broker as defined in this act.~~

~~(5) Notwithstanding the manner in which the viatical settlement broker is compensated, he or she 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 department may not issue a license to an applicant if it is not satisfied that the applicant, if a natural person, or all officers, directors, employees, stockholders, and partners who exercise or have the ability to exercise effective control of the applicant or who have the ability to influence the transaction of business by the applicant, if the applicant is not a natural person, 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.~~

~~(6) The compensation received by a life agent for activities performed as a viatical settlement broker may not be divided or shared with another person unless such other person is a life agent licensed under this chapter~~

and appointed as provided in this part. The department may specify the form of the license and may require photographing of the applicant as part of the application process.

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

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

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

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

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

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

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

(8) An applicant for a nonresident viatical settlement broker license must, in addition to designating the Chief Financial Officer as agent for service of process as required by this section, also furnish the department with the name and address of a resident of this state upon whom notices or orders of the department or process affecting the applicant or licensee may be served. After issuance of the license, the licensee must also notify the department of change of the person to receive such notices, orders, or process; such change is not effective until acknowledged by the department.

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

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

Section 19. Section 626.99175, Florida Statutes, is created to read:

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

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

(2) Application for registration as a life expectancy provider must be made to the office by the applicant on a form prescribed by the office, under oath and signed by the applicant. The application must be accompanied by a fee of \$500.

(3) A completed application shall be evidenced on a form and in a manner prescribed by the office and shall require the registered life expectancy provider to update such information and renew such registration as required by the office.

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

(a) The full name, age, residence address, and business address, and all occupations engaged in by the applicant during the 5 years preceding the date of the application.

(b) A copy of the applicant's basic organizational documents, if any, including the articles of incorporation, articles of association, partnership agreement, trust agreement, or other similar documents, together with all amendments to such documents.

(c) Copies of all bylaws, rules, regulations, or similar documents regulating the conduct of the applicant's internal affairs.

(d) A list showing the name, business and residence addresses, and official position of each individual who is responsible for conduct of the applicant's affairs, including, but not limited to, any member of the board of directors, board of trustees, executive committee, or other governing board or committee and any other person or entity owning or having the right to acquire 10 percent or more of the voting securities of the applicant, and any person performing life expectancies by the applicant.

(e) A sworn biographical statement on forms supplied by the office with respect to each individual identified under paragraph (d), including whether such individual has been associated with any other life expectancy provider or has performed any services for a person in the business of viatical settlements.

(f) A sworn statement of any criminal and civil actions pending or final against the registrant or any individual identified under paragraph (d):

(g) A general description of the following policies and procedures covering all life expectancy determination criteria and protocols:

1. The plan or plans of policies and procedures used to determine life expectancies.

2. A description of the training, including continuing training, of the individuals who determine life expectancies.

3. A description of how the life expectancy provider updates its manuals, underwriting guides, mortality tables, and other reference works and ensures that the provider bases its determination of life expectancies on current data.

(h) A plan for assuring confidentiality of personal, medical, and financial information in accordance with federal and state laws.

(i) An anti-fraud plan as required pursuant to s. 626.99278.

(j) A list of any agreements, contracts, or any other arrangement to provide life expectancies to a viatical settlement provider, viatical settlement broker, or any other person in the business of viatical settlements in connection with any viatical settlement contract or viatical settlement investment.

(5) As part of the application, and on or before March 1 of every 3 years thereafter, a registered life expectancy provider shall file with the office an audit of all life expectancies by the life expectancy provider for the 5 calendar years immediately preceding such audit, which audit shall be conducted and certified by a nationally recognized actuarial firm and shall include only the following:

(a) A mortality table.

(b) The number, percentage, and an actual-to-expected ratio of life expectancies in the following categories: life expectancies of less than 24 months, life expectancies of 25 months to 48 months, life expectancies of 49 months to 72 months, life expectancies of 73 months to 108 months, life expectancies of 109 months to 144 months, life expectancies of 145 months to 180 months, and life expectancies of more than 180 months.

(6) No viatical settlement broker, viatical settlement provider, or insurance agent in the business of viatical settlements in this state shall directly or indirectly own or be an officer, director, or employee of a life expectancy provider.

(7) Each registered life expectancy provider shall provide the office, as applicable, at least 30 days' advance notice of any change in the registrant's name, residence address, principal business address, or mailing address.

(8) A person required to be registered by this section shall for 5 years retain copies of all life expectancies and supporting documents and medical records unless those personal medical records are subject to different retention or destruction requirements of a federal or state personal health information law.

(9) An application for life expectancy provider registration shall be approved or denied by the commissioner within 60 calendar days following

receipt of a completed application by the commissioner. The office shall notify the applicant that the application is complete. A completed application that is not approved or denied in 60 calendar days following its receipt shall be deemed approved.

(10) The office may, in its discretion, deny the application for a life expectancy provider registration or suspend, revoke, or refuse to renew or continue the registration of a life expectancy provider if the office finds:

(a) Any cause for which registration could have been refused had it then existed and been known to the office;

(b) A violation of any provision of this code or of any other law applicable to the applicant or registrant;

(c) A violation of any lawful order or rule of the department, commission, or office; or

(d) That the applicant or registrant:

1. Has been found guilty of or pled guilty or nolo contendere to a felony or a crime punishable by imprisonment of 1 year or more under the law of the United States of America or of any state thereof or under the law of any other country;

2. Has knowingly and willfully aided, assisted, procured, advised, or abetted any person in the violation of a provision of the insurance code or any order or rule of the department, commission, or office;

3. Has knowingly and with intent to defraud, provided a life expectancy that does not conform to an applicant's or registrant's general practice;

4. Does not have a good business reputation or does not have experience, training, or education that qualifies the applicant or registrant to conduct the business of a life expectancy provider; or

5. Has demonstrated a lack of fitness or trustworthiness to engage in the business of issuing life expectancies.

(11) The office may, in lieu of or in addition to any suspension or revocation, assess an administrative fine not to exceed \$2,500 for each nonwillful violation or \$10,000 for each willful violation by a registered life expectancy provider. The office may also place a registered life expectancy provider on probation for a period not to exceed 2 years.

(12) It is a violation of this section for a person to represent, orally or in writing, that a life expectancy provider's registration pursuant to this act is in any way a recommendation or approval of the entity or means that the qualifications or abilities have in any way been approved of.

Section 20. Section 626.9919, Florida Statutes, is amended to read:

626.9919 Notice of change of licensee or registrant's address or name.— Each viatical settlement provider licensee and registered life expectance

~~provider, viatical settlement broker licensee, and viatical settlement sales agent licensee~~ must provide the office or department, as applicable, at least 30 days' advance notice of any change in the licensee's or registrant's name, residence address, principal business address, or mailing address.

Section 21. Section 626.992, Florida Statutes, is amended to read:

626.992 Use of licensed viatical settlement providers, viatical settlement licensed brokers, and registered life expectancy providers, ~~and 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 life agent license and has appointed himself or herself in conformance with this chapter ~~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) After July 1, 2006, a person may not operate as a life expectancy provider unless such person is registered as a life expectancy provider pursuant to this act. ~~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) After July 1, 2006, a viatical settlement provider, viatical settlement broker, or any other person in the business of viatical settlements may not obtain life expectancies from a person who is not registered as a life expectancy provider pursuant to this act. A person may not perform the functions of a viatical settlement sales agent unless licensed as a life agent as defined in s. 626.015 and as provided in this chapter.

Section 22. Subsections (1) and (2) of section 626.9921, Florida Statutes, are 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 form has been filed with the office and only after the form has been approved by the office.

(2) The viatical settlement contract form, ~~viatical settlement purchase agreement form~~, escrow form, or related form must be filed with the office at least 60 days before its use. The form is considered approved on the 60th

day after its date of filing unless it has been previously disapproved by the office. The office 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~~.

Section 23. Subsection (2) of section 626.9922, Florida Statutes, is amended, and subsections (5), (6), and (7) are added to said section, to read:

626.9922 Examination.—

(2) All accounts, books and records, documents, files, contracts, and other information relating to all transactions of viatical settlement contracts, life expectancies, or viatical settlement purchase agreements made before July 1, 2005, 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 office or department for inspection during reasonable business hours.

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

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

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

Section 24. Section 626.99245, Florida Statutes, is amended 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 a 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 office.~~

(1)(2) A viatical settlement provider who from this state enters into a viatical settlement contract with a viator who is a 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 office.

(2)(3) This section does not affect the requirement of ss. 626.9911(12)(5) and 626.9912(1) that a viatical settlement provider doing business from this state must obtain a viatical settlement license from the office. As used in this subsection, the term "doing business from this state" includes effectuating viatical settlement contracts ~~and effectuating viatical settlement purchase agreements~~ from offices in this state, regardless of the state of residence of the viator ~~or the viatical settlement purchaser~~.

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

Section 25. Section 626.9925, Florida Statutes, is amended to read:

626.9925 Rules.—The commission may adopt rules to administer this act, including rules establishing standards for evaluating advertising by licensees; rules providing for the collection of data, for disclosures to viators ~~or purchasers, and for the reporting of life expectancies~~ and for the registration of life expectancy providers; and rules defining terms used in this act and prescribing recordkeeping requirements relating to executed viatical settlement contracts ~~and viatical settlement purchase agreements~~.

Section 26. 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 office or department to directly or indirectly regulate the amount paid as consideration for entry into a viatical settlement contract ~~or viatical settlement purchase agreement~~.

Section 27. 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 ~~IX~~ X of this chapter, entitled Unfair Insurance Trade Practices, 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 28. Paragraph (b) of subsection (1) of section 626.99275, Florida Statutes, is amended, paragraph (d) is added to that subsection, and subsection (2) of that section is reenacted, to read:

626.99275 Prohibited practices; penalties.—

(1) It is unlawful for any person:

(b) To knowingly or with the intent to defraud, for the purpose of depriving another of property or for pecuniary gain, issue or use a pattern of false, misleading, or deceptive life expectancies. In the solicitation or sale of a viatical settlement purchase agreement:

1. ~~To employ any device, scheme, or artifice to defraud;~~

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

(d) To knowingly or intentionally facilitate the change of state of residency of a viator to avoid the provisions of this chapter.

(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. 775.083, 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. 775.083, 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. 775.083, or s. 775.084, if the insurance policy involved is valued at \$100,000 or more.

Section 29. Section 626.99278, Florida Statutes, is amended to read:

626.99278 Viatical provider anti-fraud plan.—Every licensed viatical settlement provider and registered life expectancy provider 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 and prohibited practices set forth in s. 626.99275 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.;

(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 for the investigation of investigating unresolved material inconsistencies between medical records and insurance applications.

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

Section 30. Section 626.9928, Florida Statutes, is amended to read:

626.9928 Acquisitions.—Acquisition of interest in a viatical settlement provider ~~or viatical settlement broker~~ is subject to s. 628.4615.

Section 31. Section 626.99285, Florida Statutes, is amended to read:

626.99285 Applicability of insurance code.—In addition to other applicable provisions cited in the insurance code, the office or department, as appropriate, 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 32. Section 626.99295, Florida Statutes, is amended to read:

626.99295 Grace period.—~~Any person who, on July 1, 2005, is effectuating a viatical settlement purchase agreement made before July 1, 2005, under provisions of law in effect before such date, which viatical settlement purchase agreement was not registered pursuant to chapter 517, must proceed within 30 days after July 1, 2005, to conclude all viatical settlement purchase transactions in progress, provided, if funds have not been matched with a viaticated policy, such funds, or any unmatched portion of such funds, shall be returned to the viatical settlement purchaser within 30 days after July 1, 2005. The provider may not solicit, negotiate, advertise, or effectuate new viatical settlement purchase agreements after July 1, 2005. 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 office, department, or the former Department of Insurance to the contrary, until the office or department, as applicable, approves or disapproves the viatical settlement provider's application for licensure if the viatical settlement provider or viatical settlement broker filed with the former 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 former department approval was required under this part must have been filed by August 1, 2000, and may continue to be used until disapproved by the office or department.~~

Section 33. Sections 626.9917, 626.9918, 626.99235, 626.99236, and 626.99277, Florida Statutes, are repealed.

Section 34. This act shall take effect July 1, 2005.

Approved by the Governor June 15, 2005.

Filed in Office Secretary of State June 15, 2005.