

## CHAPTER 98-164

### Committee Substitute for Senate Bill No. 2004

An act relating to the Viatical Settlement Act; amending s. 626.9911, F.S.; modifying definitions used in the act and adding a definition of related provider trust; amending s. 626.9913, F.S.; requiring viatical settlement providers to file certain information with the Department of Insurance; specifying applicability of fee and deposit requirements; amending s. 626.9914, F.S.; specifying liability of a viatical settlement provider for a related provider trust; amending s. 626.9921, F.S.; requiring certain providers to file notice with the department; creating s. 626.99235, F.S.; prohibiting misrepresentation; providing disclosure of required information; providing an effective date.

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

Section 1. Subsections (5) and (6) of section 626.9911, Florida Statutes, are amended and subsection (8) is added to that section, to read:

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

(5) “Viatical settlement contract” means a written settlement entered into between a viatical settlement provider, or its related provider trust, and a viator. The agreement must establish the terms under which the viatical settlement provider will pay compensation or anything of value.

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

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

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

(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. 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.

Section 2. Subsection (2) of section 626.9913, Florida Statutes, is amended and subsection (4) is added to that section, to read:

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

(2) Annually, on or before March 1, the viatical settlement provider licensee shall file a statement containing information the department requires and shall pay to the department a license fee in the amount of \$500. A viatical settlement provider shall include in all statements filed with the department all information requested by the department regarding a related provider trust established by the viatical settlement provider. The department 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.

(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.

Section 3. Subsection (4) is added to section 626.9914, Florida Statutes, to read:

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

(4) If a viatical settlement provider establishes a related provider trust as permitted by this act, the viatical settlement provider shall be liable and responsible for the performance of all obligations of the related provider trust under all viatical settlement contracts entered into by the related provider trust, and for the compliance of the related provider trust with all provisions of this act. Any violation of this act by the related provider trust shall be deemed a violation of this act by the viatical settlement provider as well as the related provider trust. If the related provider trust violates any provisions of this act, the department may exercise all remedies set forth in this act for such violations against the viatical settlement provider, as well as the related provider trust.

Section 4. Subsection (1) of section 626.9921, Florida Statutes, is amended, and subsection (3) is added to that section, to read:

626.9921 Filing of forms; required procedures; approval.—

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

(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.

Section 5. Section 626.99235, Florida Statutes, is created to read:

626.99235 Disclosures to investors; misrepresentations.—

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

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

(a) That the return available under the viatical investment is directly tied to the projected life span or date of death of one or more viators;

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

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

(d) The amount of any trust fees or other expenses, if any, to be charged to the investor.

The written disclosure required under this subsection shall be conspicuously displayed in any investment agreement, and any solicitation material furnished to the investor by such provider, trust or person, and shall be in contrasting color and in not less than 10 point type or no smaller than the largest type on the page if larger than 10 point type.

Section 6. This act shall take effect July 1, 1998.

Became a law without the Governor's approval May 22, 1998.

Filed in Office Secretary of State May 21, 1998.