

By the Committee on Banking and Insurance; and Senator Geller

311-1791-01

1 A bill to be entitled
2 An act relating to viaticals; amending s.
3 626.9911, F.S.; revising definitions; amending
4 s. 626.9921, F.S.; providing for approval of
5 forms; amending s. 626.99235, F.S.; providing
6 for applicability to purchase in the secondary
7 market; amending s. 626.99236, F.S.; requiring
8 certain purchases to be handled by an
9 independent third-party trustee; amending s.
10 626.9924, F.S.; revising procedures for
11 tracking the insured; amending s. 626.99245,
12 F.S.; clarifying the application of licensing
13 requirements to viatical settlement providers;
14 providing an effective date.

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

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18 Section 1. Subsections (8), (9), (10), (14), and (15)
19 of section 626.9911, Florida Statutes, are amended to read:

20 626.9911 Definitions.--As used in this act, the term:

21 (8) "Related provider trust" means a titling trust or
22 other trust established by a licensed viatical settlement
23 provider or financing entity for the sole purpose of holding
24 the ownership or beneficial interest in purchased policies in
25 connection with a financing transaction ~~entering into or~~
26 ~~owning viatical settlement contracts.~~ The trust must have a
27 written agreement with a licensed viatical settlement provider
28 or financing entity under which the licensed viatical
29 settlement provider or financing entity is responsible for
30 insuring compliance with all statutory and regulatory
31 requirements and under which the trust agrees to make all

1 records and files relating to viatical settlement transactions
2 available to the department as if those records and files were
3 maintained directly by the licensed viatical settlement
4 provider. This term does not include an independent
5 third-party trustee or escrow agent or a trust that does not
6 enter into agreements with a viator. A related provider trust
7 shall be subject to all provisions of this act that apply to
8 the viatical settlement provider who established the related
9 provider trust, except s. 626.9912, which shall not be
10 applicable. A viatical settlement provider may establish no
11 more than one related provider trust, and the sole trustee of
12 such related provider trust shall be the viatical settlement
13 provider licensed under s. 626.9912. The name of the licensed
14 viatical settlement provider shall be included within the name
15 of the related provider trust.

16 (9) "Viatical settlement purchase agreement" means a
17 contract or agreement, entered into by a viatical settlement
18 purchaser, to which the viator is not a party, to purchase a
19 life insurance policy or an interest in a life insurance
20 policy, which is entered into for the purpose of deriving an
21 economic benefit. The term also includes purchases made in the
22 secondary market, that is, purchases from any person other
23 than the provider who effectuated the viatical settlement
24 contract.

25 (10) "Viatical settlement purchaser" means a person
26 who gives a sum of money as consideration for a life insurance
27 policy or an equitable or legal interest in the death benefits
28 of a life insurance policy that has been or will be the
29 subject of a viatical settlement contract, for the purpose of
30 deriving an economic benefit, including purchases made in the
31 secondary market, that is, purchases from any person other

1 than the provider who effectuated the viatical settlement
2 contract or an entity affiliated with the provider. The term
3 does not include, ~~other than~~ a licensee under this part, an
4 accredited investor as defined in Rule 501, Regulation D of
5 the Securities Act Rules, or a qualified institutional buyer
6 as defined by Rule 144(a) of the Federal Securities Act, or a
7 special purpose entity ~~who gives a sum of money as~~
8 ~~consideration for a life insurance policy or an equitable or~~
9 ~~legal interest in the death benefits of a life insurance~~
10 ~~policy which has been or will be the subject of a viatical~~
11 ~~settlement contract, for the purpose of deriving an economic~~
12 ~~benefit.~~ The above references to Rule 501, Regulation D and
13 Rule 144(a) of the Federal Securities Act are used strictly
14 for defining purposes and shall not be interpreted in any
15 other manner. Any person who claims to be an accredited
16 investor shall sign an affidavit stating that he or she is an
17 accredited investor, the basis of that claim, and that he or
18 she understands that as an accredited investor he or she will
19 not be entitled to certain protections of the Viatical Act.
20 This affidavit must be kept with other documents required to
21 be maintained by this act.

22 (14) "Special purpose entity" means an entity
23 established by a licensed viatical settlement provider, which
24 may be a corporation, partnership, trust, limited liability
25 company, or other similar entity formed solely to provide,
26 either directly or indirectly, access to ~~act as a vehicle to~~
27 ~~permit a lender to the provider to access~~ institutional
28 capital markets to a viatical settlement for the provider or
29 financing entity. A special purpose entity shall not enter
30 into a viatical settlement contract or a viatical settlement
31 purchase agreement.

1 (15) "Financing entity" means an underwriter,
2 placement agent, lender, purchaser of securities, or purchaser
3 of a policy or certificate from a viatical settlement
4 provider, credit enhancer, or any entity ~~person~~ that ~~may be a~~
5 ~~party to a viatical settlement contract and that~~ has direct
6 ownership in a policy or certificate that is the subject of a
7 viatical settlement contract, but whose principal ~~sole~~
8 activity related to the transaction is providing funds or
9 credit enhancement to effect the viatical settlement and who
10 has an agreement in writing with one or more licensed viatical
11 settlement providers ~~a licensed viatical settlement provider~~
12 ~~to act as a participant in a financing transaction.~~ The term
13 does not include a nonaccredited investor, a viatical
14 settlement purchaser, or other natural person. A financing
15 entity may not enter into a viatical settlement contract.

16 Section 2. Subsection (1) of section 626.9921, Florida
17 Statutes, is amended to read:

18 626.9921 Filing of forms; required procedures;
19 approval.--

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

26 Section 3. Subsection (3) is added to section
27 626.99235, Florida Statutes, to read:

28 626.99235 Disclosures to viatical settlement
29 purchasers; misrepresentations.--

30 (3) The requirements of this section also apply to
31 purchases made in the secondary market which involve purchases

1 from any person other than the provider who effectuated the
2 viatical settlement contract.

3 Section 4. Section 626.99236, Florida Statutes, is
4 amended to read:

5 626.99236 Further disclosures to viatical settlement
6 purchasers.--

7 (1) No later than 5 days prior to the assignment,
8 transfer, sale, devise, or bequest of the death benefit or
9 ownership of all or a portion of the insurance policy or
10 certificate of insurance to the purchaser, the viatical
11 settlement provider and the viatical settlement sales agent,
12 themselves ~~itself~~ or through another person, shall provide in
13 writing the following disclosures to any viatical settlement
14 purchaser:

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

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

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

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

29 (e) The type of life insurance policy offered or sold,
30 including a statement as to whether the policy is whole life,
31 term life, universal life, or a group policy certificate; a

1 statement as to whether the policy is in lapse status or has
2 lapsed in the last 2 years; and a statement as to whether the
3 purchaser is entitled to benefits contained in the policy
4 other than the death benefit of the policy.

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

8 (2) The viatical settlement purchase agreement is
9 voidable by the purchaser at any time within 3 days after the
10 disclosures mandated by this section are received by the
11 purchaser.

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

20 (4) A viatical settlement purchase transaction in the
21 secondary market which involves purchases from any person
22 other than the provider who effectuated the viatical
23 settlement contract may be completed only through the use of
24 an independent third-party trustee or escrow agent. All funds
25 to be paid by the purchaser must be deposited by the purchaser
26 with the independent third-party trustee or escrow agent. The
27 independent third-party trustee or escrow agent shall not
28 release the deposited funds to the seller until after the
29 3-day voidable period established by subsection (2) has
30 expired.

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1 (5) The requirements of subsections (1), (2), and (3)
2 also apply to purchases made in the secondary market which
3 involve purchases occurring from any person other than the
4 provider who effectuated the viatical settlement contract.

5 Section 5. Subsection (10) is added to section
6 626.9924, Florida Statutes, to read:

7 626.9924 Viatical settlement contracts; procedures;
8 rescission.--

9 (10) The viatical settlement provider who effectuated
10 the viatical settlement contract with the viator (the "initial
11 provider") is responsible for tracking the insured, including
12 but not limited to, keeping track of the insured's whereabouts
13 and health status, submission of death claims or assisting the
14 beneficiary in the submission of death claims, and the status
15 of the payment of premiums until the death of the insured.
16 This responsibility may be contracted out to a third party;
17 however, the ultimate responsibility remains with the initial
18 provider. This responsibility continues with the initial
19 provider, notwithstanding any transfers of the viaticated
20 policy in the secondary market. This subsection applies only
21 to those viaticated policies that are or are to become the
22 subject of viatical settlement purchase agreements.

23 Section 6. Subsection (3) is added to section
24 626.99245, Florida Statutes, to read:

25 626.99245 Conflict of regulation of viaticals.--

26 (3) This section does not affect the requirement of
27 ss. 626.9911(6) and 626.9912(1) that a viatical settlement
28 provider doing business from this state must obtain a viatical
29 settlement license from the department. As used in this
30 subsection, the term "doing business from this state" includes
31 effectuating viatical settlement contracts and effectuating

1 viatical settlement purchase agreements from offices in this
2 state, regardless of the state of residence of the viator or
3 the viatical settlement purchaser.

4 Section 7. This act shall take effect July 1, 2001.

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6 STATEMENT OF SUBSTANTIAL CHANGES CONTAINED IN
7 COMMITTEE SUBSTITUTE FOR
8 SB 1530

9 Clarifies that the terms "viatical settlement purchase
10 agreement" and "viatical settlement purchaser" apply to
11 purchases in the secondary market.

12 Expands the definitions of the terms "related provider trust",
13 "special purpose entity" and "financing entity" to provide for
14 mechanisms to finance viatical transactions.

15 Specifies that viatical settlement forms must be filed with
16 and approved by the Department of Insurance before such forms
17 may be used in this state.

18 Clarifies that the initial disclosures made to viatical
19 settlement purchasers must also be made to purchasers in the
20 secondary market and provides that sales agents be responsible
21 for specified disclosures.

22 Requires the use of an escrow agent or trustee as to viatical
23 settlement purchase transactions in the secondary market to
24 guarantee specified rights to purchasers.

25 Removes provisions which expanded the definition of viatical
26 settlement providers, which extended the grace period for
27 unlicensed viatical settlement providers, and which provided
28 that adding a free accelerated death benefit onto a life
29 insurance policy did not convert that policy into a health
30 insurance policy.
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