

By Senator Geller

29-1194-99

1 A bill to be entitled
2 An act relating to viatical settlement
3 contracts; amending s. 626.9911, F.S.; adding
4 and revising definitions; revising
5 qualifications for licensure; creating s.
6 626.99181, F.S.; limiting broker fees; amending
7 s. 626.9922, F.S.; revising examination
8 authority; amending s. 626.99235, F.S.;
9 modifying disclosure requirements for persons
10 advertising or soliciting viatical settlement
11 contracts; amending s. 626.9924, F.S.; adding
12 requirements for entering viatical settlement
13 contracts; creating s. 626.99271, F.S.;
14 providing remedies in cases of unlawful sales;
15 creating s. 626.99272, F.S.; authorizing cease
16 and desist orders; providing for imposition and
17 collection of an administrative fine; creating
18 s. 626.99275, F.S.; proscribing certain
19 practices; creating s. 626.99277; proscribing
20 certain false representations; providing an
21 effective date.

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

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

27 626.9911 Definitions.--As used in this act, the term:

28 (1) "Department" means the Department of Insurance.

29 (2) "Independent third-party trustee or escrow agent"

30 means an attorney, certified public accountant, financial
31 institution, or other person providing escrow services under

1 the authority of a regulatory body. The term does not include
2 any person associated, affiliated, or under common control
3 with a viatical settlement provider or viatical settlement
4 broker.

5 (3) "Person" has the meaning specified in s. 1.01.

6 (4) "Viatical settlement broker" means a person who,
7 for valuable consideration, offers or attempts to negotiate
8 viatical settlement contracts between a viator resident in
9 this state and one or more viatical settlement providers. The
10 term does not include an attorney, accountant, financial
11 planner, or person acting under a power of attorney from the
12 viator, who is retained to represent the viator and whose
13 compensation is paid solely by the viator without regard to
14 whether a viatical settlement contract is effected.

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

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

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

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

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

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

7 (7) "Viator" means the original owner of a life
8 insurance policy insuring the life of an individual with a
9 ~~natural person who has~~ a catastrophic, or life-threatening, or
10 chronic illness or condition ~~and~~ who is over the age of 55 and
11 who enters or seeks to enter into a viatical settlement
12 contract has the right to assign, transfer, sell, devise, or
13 ~~bequeath the benefits of his or her life insurance policy.~~

14 (8) "Related provider trust" means a trust established
15 by a viatical settlement provider for the sole purpose of
16 entering into or owning viatical settlement contracts. A
17 related provider trust shall be subject to all provisions of
18 this act that apply to the viatical settlement provider who
19 established the related provider trust, except s. 626.9912,
20 which shall not be applicable. A viatical settlement provider
21 may establish no more than one related provider trust, and the
22 sole trustee of such related provider trust shall be the
23 viatical settlement provider licensed under s. 626.9912. The
24 name of the licensed viatical settlement provider shall be
25 included within the name of the related provider trust.

26 (9) "Insurance investment contract" means a contract
27 or agreement, to which the settlement insured is not a party,
28 to purchase a life insurance policy or an interest in a life
29 insurance policy, which is entered into for the purpose of
30 deriving an economic benefit.

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1 (10) "Insurance investment broker" means a person who
2 solicits, negotiates, or advertises investment in insurance
3 investment contracts.

4 (11) "Settlement insured" means the person whose life
5 is insured by the policy that is subject to the viatical
6 settlement contract.

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

9 Section 3. 626.99181 Viatical settlement broker
10 fees.--

11 (1) A viatical settlement broker's fee may be based
12 only on a percentage of the compensation or value paid by a
13 viatical settlement provider to a viator under a viatical
14 settlement contract.

15 (2) No person may receive any commission or
16 compensation of any kind for performing the functions of a
17 viatical settlement broker on a policy for which the person
18 has received a commission from the sale of the policy.

19 (3) A viatical settlement broker shall disclose to a
20 prospective viator the limitations on the broker's fee imposed
21 by this section.

22 Section 4. Subsection (3) is added to section 626.992,
23 Florida Statutes, to read:

24 626.992 Use of licensed brokers and providers
25 required.--

26 (3) No individual whose license has been revoked or
27 suspended for any reason may be licensed as a viatical
28 settlement provider or broker, be employed by a viatical
29 settlement provider or broker, or solicit investment funds
30 from investors or potential investors during the period of
31 such revocation or suspension.

1 Section 5. Subsection (1) of section 626.9922, Florida
2 Statutes, is amended to read:

3 626.9922 Examination.--

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

16 Section 6. Section 626.99235, Florida Statutes, 1998
17 Supplement, is amended to read:

18 626.99235 Disclosures to investors;
19 misrepresentations.--

20 (1) No person shall misrepresent or fail to clearly
21 and affirmatively disclose the nature of the return or the
22 duration of time to obtain the return of any investment
23 related to one or more viatical settlement contracts
24 ~~settlements sold by a viatical settlement provider or related~~
25 ~~provider trust.~~

26 (2) Any ~~The~~ viatical settlement provider, and any
27 insurance investment broker, itself or through another person,
28 shall provide in writing the following disclosures to any
29 investor or investor prospect investing in any viatical
30 settlement contract:

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

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

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

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

15 (e) The name and address of the person who is
16 responsible for paying the premium until the death of the
17 settlement insured.

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

20 (g) The basis for the assumption of life expectancy
21 used in the solicitation or advertisement.

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23 The written disclosure required under this subsection must
24 ~~shall~~ be conspicuously displayed in any insurance investment
25 contract agreement, and any solicitation material furnished to
26 the investor or prospective investor by such provider, trust
27 or person, and must ~~shall~~ be in contrasting color and in not
28 less than 10-point type or no smaller than the largest type on
29 the page if larger than 10-point type.

30 Section 7. Subsection (7) is added to section
31 626.9924, Florida Statutes, to read:

1 626.9924 Viatical settlement contracts; procedures;
2 rescission.--

3 (7) Within 10 days after the execution of the viatical
4 settlement contract, the escrow agent and provider must give
5 notice to the insurer that the policy has become subject to a
6 viatical settlement contract.

7 Section 8. Section 626.99271, Florida Statutes, is
8 created to read:

9 626.99271 Remedies available in cases of unlawful
10 sale.--A material violation of this part is grounds for
11 rescission of any insurance investment contract.

12 Section 9. Section 626.99272, Florida Statutes, is
13 created to read:

14 626.99272 Cease and desist orders.--

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

19 (2) When the department finds that such action
20 presents an immediate danger to the public which requires an
21 immediate final order, it may issue an emergency cease and
22 desist order reciting with particularity the facts underlying
23 such findings. The emergency cease and desist order is
24 effective immediately upon service of a copy of the order on
25 the respondent and remains effective for 90 days. If the
26 department begins nonemergency cease and desist proceedings
27 under subsection (1), the emergency cease and desist order
28 remains effective until conclusion of the proceedings under
29 ss. 120.569 and 120.57.

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1 (3) The department may impose and collect an
2 administrative fine not to exceed \$50,000 per violation
3 against any person found to have violated this section.

4 Section 10. Section 626.99275, Florida Statutes, is
5 created to read:

6 626.99275 Prohibited practices.--It is unlawful for
7 any person to enter into a viatical settlement contract
8 involving an insurance policy during its contestable period.

9 Section 11. Section 626.99277, Florida Statutes, is
10 created to read:

11 626.99277 False representations; deceptive words.--

12 (1) It is unlawful for a person in the advertisement,
13 offer, or sale of an insurance investment contract to
14 misrepresent that such a contract has been guaranteed,
15 sponsored, recommended, or approved by the state or any agency
16 or officer of the state or by the United States or any agency
17 or officer of the United States.

18 (2) It is unlawful for a person in conjunction with
19 the sale of an insurance investment contract to directly or
20 indirectly misrepresent that such person has been sponsored,
21 recommended, or approved, or that her or his abilities or
22 qualifications have in any respect been passed upon, by the
23 state or any agency or officer of the state or by the United
24 States or any agency or officer of the United States.

25 (3) It is unlawful for a person in the offer or sale
26 of any insurance investment contract to obtain money or
27 property by a misrepresentation that:

28 (a) The insurance investment contract purchased,
29 offered, or sold is guaranteed, sponsored, recommended, or
30 approved by the state or any agency or officer of the state or
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1 by the United States or any agency or officer of the United
2 States; or

3 (b) The person is sponsored, recommended, or approved,
4 or that such person's abilities or qualifications have in any
5 respect been passed upon, by the state or any agency or
6 officer of the state or by the United States or any agency or
7 officer of the United States.

8 (4) Subsection (1) and subsection (2) do not prohibit
9 a statement that the person is licensed or appointed under
10 this part if such statement is required by the provisions of
11 this part or rules adopted thereunder, if such statement is
12 true in fact, and if the effect of such statement is not
13 misrepresented.

14 (5) A person may not represent that an investment
15 contract is guaranteed by any insurance guaranty fund.

16 (6) A person may not represent that the investment in
17 an investment contract is "guaranteed," or that the principal
18 is "safe," or that the investment is free of risk.

19 Section 12. This act shall take effect upon becoming a
20 law.

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SENATE SUMMARY

Amends various sections of the "Viatical Settlement Act."
Revises definitions and qualifications for licensure as a
viatical settlement provider or viatical settlement
broker. Provides that a viatical settlement broker's fee
may be based only on a percent of the compensation or
value paid by a viatical settlement provider to a viator
under a viatical settlement contract. Authorizes the
Department of Insurance to order a licensee or applicant
for license to produce advertizing and solicitation
materials. Strengthens the disclosure requirements for
persons advertising or soliciting viatical settlement
contracts. Provides that within 10 days of the execution
of the viatical settlement contract, the escrow agent and
provider must give notice to the insurer that the policy
has become subject to a viatical settlement contract.
Provides remedies in cases of unlawful sales. Authorizes
the department to issue cease and desist orders and to
impose and collect an administrative fine not to exceed
\$50,000 per violation. Prohibits certain practices and
prescribes specified false representations.