

By Senator Lee

23-1614A-00

1 A bill to be entitled
2 An act relating to viatical settlements;
3 amending s. 626.9922, F.S.; providing criminal
4 penalties for the viatical settlement provider
5 licensees and viatical settlement broker
6 licensees who fail to make records available
7 for examination by the Department of Insurance;
8 amending s. 626.99235, F.S.; requiring a
9 disclosure of the identity of the author of a
10 viator's Mortality Profile Report and his or
11 her relationship to all parties in the
12 viatication transaction; amending s. 626.9924,
13 F.S.; providing for the waiver of a viator's
14 constitutional right to privacy relating to
15 medical records; requiring a viatical
16 settlement provider to notify the insurer who
17 issued the policy of the policy's viatication
18 within a prescribed time; amending s.
19 626.99275, F.S.; prohibiting certain acts
20 relating to brokering or otherwise dealing in
21 viatical settlement contracts; providing
22 criminal penalties; amending s. 627.455, F.S.;
23 providing an incontestability exception;
24 providing an effective date.

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

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

30 626.9922 Examination.--
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1 (2)(a) All accounts, records, documents, files, and
2 other information relating to all transactions of viatical
3 settlement contracts or viatical settlement purchase
4 agreements must be maintained by the licensee for a period of
5 at least 3 years after the death of the insured and must be
6 available to the department for inspection during reasonable
7 business hours.

8 (b) Any licensee who fails to maintain or make
9 available records as required by paragraph (a) commits a
10 misdemeanor of the first degree, punishable as provided in s.
11 775.082 or s. 775.083. Any person or entity who violates
12 paragraph (a) and who has previously been convicted of a
13 violation of that paragraph commits a felony of the third
14 degree, punishable as provided in s. 775.082, s. 775.083, or
15 s. 775.084.

16 Section 2. Subsection (2) of section 626.99235,
17 Florida Statutes, is amended to read:

18 626.99235 Disclosures to viatical settlement
19 purchasers; misrepresentations.--

20 (2) The viatical settlement provider and the viatical
21 settlement sales agent, themselves or through another person,
22 shall provide in writing the following disclosures to any
23 viatical settlement purchaser or purchaser prospect:

24 (a) That the return represented as being available
25 under the viatical settlement purchase agreement is directly
26 tied to the projected life span of one or more insureds.

27 (b) If a return is represented, the disclosure shall
28 indicate the projected life span of the insured or insureds
29 whose life or lives are tied to the return. The identity of
30 the author of the viator's Mortality Profile Report; his or
31 her name, address, and relationship to all parties in the

1 viatication transaction; and his or her qualifications to make
2 such a report must be disclosed at the same time as the
3 report.

4 (c) If required by the terms of the viatical
5 settlement purchase agreement, that the viatical settlement
6 purchaser shall be responsible for the payment of insurance
7 premiums on the life of the insured, late or surrender fees,
8 or other costs related to the life insurance policy on the
9 life of the insured or insureds which may reduce the return.

10 (d) The amount of any trust fees, commissions,
11 deductions, or other expenses, if any, to be charged to the
12 viatical settlement purchaser.

13 (e) The name and address of the person responsible for
14 tracking the insured.

15 (f) That group policies may contain limitations or
16 caps in the conversion rights, that additional premiums may
17 have to be paid if the policy is converted, and that the party
18 responsible for the payment of such additional premiums shall
19 be identified.

20 (g) That the life expectancy and rate of return are
21 only estimates and cannot be guaranteed.

22 (h) That the purchase of a viatical settlement
23 contract should not be considered a liquid purchase, since it
24 is impossible to predict the exact timing of its maturity and
25 the funds may not be available until the death of the insured.

26 (i) The name and address of the person with the
27 responsibility for paying the premium until the death of the
28 insured.

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30 The written disclosure required under this subsection shall be
31 conspicuously displayed in any viatical settlement purchase

1 agreement, and in any solicitation material furnished to the
2 viatical settlement purchaser by such viatical settlement
3 provider, related provider trust, or person, and shall be in
4 contrasting color and in not less than 10-point type or no
5 smaller than the largest type on the page if larger than
6 10-point type. The department is authorized to adopt by rule
7 the disclosure form to be used. The disclosures need not be
8 furnished in an invitation to inquire, the objective of which
9 is to create a desire to inquire further about entering into a
10 viatical settlement purchase agreement. The invitation to
11 inquire may not quote rates of return, may not include
12 material attendant to the execution of any specific viatical
13 settlement purchase agreement, and may not relate to any
14 specific viator.

15 Section 3. Section 626.9924, Florida Statutes, is
16 amended to read:

17 626.9924 Viatical settlement contracts; procedures;
18 rescission.--

19 (1) In entering into a viatical settlement contract, a
20 viator affirmatively and unconditionally waives any statutory
21 or constitutional right to privacy in the contents of his or
22 her medical records as against the department or any state or
23 local agency charged with the responsibility to investigate
24 and prosecute instances of fraud or false representations in
25 the viatical settlement contract or any commercial transaction
26 relating thereto. No person who has obtained viator medical
27 records under this section may disclose or be compelled to
28 disclose them except in furtherance of an administrative,
29 civil, or criminal investigation or prosecution for fraud or
30 false representations in the viatical settlement contract or
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1 any commercial transaction related thereto. Such records must
2 otherwise be kept confidential.

3 (2)(1) A viatical settlement provider entering into a
4 viatical settlement contract with any viator must first obtain
5 a witnessed document in which the viator consents to the
6 viatical settlement contract, acknowledges the catastrophic or
7 life-threatening illness, represents that he or she has a full
8 and complete understanding of the viatical settlement contract
9 and the benefits of the life insurance policy, unconditionally
10 releases his or her medical records to the viatical settlement
11 provider, as well as to any state or local agency charged with
12 the responsibility to investigate and prosecute instances of
13 fraud or false representations, and acknowledges that he or
14 she has entered into the viatical settlement contract freely
15 and voluntarily.

16 (3)(2) All viatical settlement contracts subject to
17 this act must contain an unconditional rescission provision
18 which allows the viator to rescind the contract within 15 days
19 after the viator receives the viatical settlement proceeds,
20 conditioned on the return of such proceeds. Once the
21 rescission period has closed, the viatical settlement provider
22 must notify the insurer who issued the policy of the policy's
23 viatication within a further 15 days by mailing a copy of the
24 policy to the insurer, and must provide the insurer with a
25 detailed breakdown of the viatication transaction within 30
26 days after the close of the rescission period.

27 (4)(3) A viatical settlement transaction may be
28 completed only through the use of an independent third-party
29 trustee or escrow agent. Immediately upon receipt by the
30 independent third-party trustee or escrow agent of documents
31 from the viator to effect the transfer of the insurance

1 policy, the viatical settlement provider must pay the proceeds
2 of the settlement to an escrow or trust account managed by the
3 independent third-party trustee or escrow agent in a financial
4 institution licensed under Florida law or a federally
5 chartered financial institution that is a member of the
6 Federal Reserve System, pending acknowledgement of the
7 transfer by the issuer of the policy. An advance or partial
8 payment of the proceeds due under a viatical settlement
9 contract may not be used to effect transfer of the subject
10 policy; any such advance or partial payment is made at the
11 sole discretion and risk of the viatical settlement provider.

12 (4) Upon receipt of all viatical settlement contract
13 proceeds, the independent third-party trustee or escrow agent
14 must release to the viatical settlement provider all documents
15 necessary to complete the transfer of the insurance policy or
16 certificate of insurance so that the transfer, assignment,
17 sale, bequest, or devise may be effected.

18 (5) The independent third-party trustee or escrow
19 agent must transfer all proceeds of the viatical settlement
20 contract within 3 business days after receiving from the
21 issuer of the subject policy acknowledgment of the transfer,
22 assignment, bequest, sale, or devise. Failure to transfer
23 proceeds as required by this subsection renders the viatical
24 settlement contract and the transfer, assignment, bequest,
25 sale, or devise voidable.

26 (6) A viatical settlement provider may not negotiate
27 or enter into a viatical settlement contract with a viator if
28 the subject policy contains an accelerated benefits provision
29 allowing benefits to be paid for a period in advance of the
30 expected death which is equal to or exceeds the time period
31 available under the viatical settlement contract, and at an

1 amount which is equal to or exceeds the amount available under
2 the viatical settlement contract, unless the issuer of the
3 policy, in writing, denies, declines, or refuses to provide
4 such accelerated benefits. If the insurer does not respond to
5 a request to effectuate an accelerated benefits provision sent
6 by certified mail within 30 days after receiving the request,
7 the insurer shall be deemed to have denied, declined, or
8 refused to provide such accelerated benefits.

9 Section 4. Section 626.99275, Florida Statutes, is
10 amended to read:

11 626.99275 Prohibited practices.--It is unlawful for
12 any person:

13 (1)(a) To knowingly enter into, broker, or otherwise
14 deal in a viatical settlement contract the subject of which is
15 a life insurance policy that was obtained by means of a false,
16 deceptive, or misleading application for the life insurance
17 policy.

18 (b) To knowingly enter into, broker, or otherwise deal
19 in a viatical settlement contract when the subject of the
20 contract is a life insurance policy without having completed a
21 due-diligence inquiry to establish the truth and accuracy of
22 the representations contained within the policy.

23 (2) In the solicitation or sale of a viatical
24 settlement purchase agreement:

25 (a) To employ any device, scheme, or artifice to
26 defraud;

27 (b) To obtain money or property by means of an untrue
28 statement of a material fact or by any omission to state a
29 material fact necessary in order to make the statements made,
30 in light of the circumstances under which they were made, not
31 misleading; or

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

4 (3) A person who violates any provision of this
5 section commits the crime of Viatical Settlement Insurance
6 Fraud, which is:

7 1. A felony of the third degree, punishable as
8 provided in s. 775.082, s. 775.083, or s. 775.084, if the
9 insurance policy involved is valued at any amount less than
10 \$20,000.

11 2. A felony of the second degree, punishable as
12 provided in s. 775.082, s. 775.083, or s. 775.084, if the
13 insurance policy involved is valued at \$20,000 or more, but
14 less than \$100,000.

15 3. A felony of the first degree, punishable as
16 provided in s. 775.082, s. 775.083, or s. 775.084, if the
17 insurance policy involved is valued at \$100,000 or more.

18 Section 5. Section 627.455, Florida Statutes, is
19 amended to read:

20 627.455 Incontestability.--Every insurance contract
21 shall provide that the policy shall be incontestable after it
22 has been in force during the lifetime of the insured for a
23 period of 2 years from its date of issue except for the
24 following circumstances:

25 (1) Nonpayment of premiums;~~and except,~~

26 (2) At the option of the insurer, as to provisions
27 relative to benefits in event of disability and as to
28 provisions ~~that~~ which grant additional insurance specifically
29 against death by accident or accidental means; ~~and~~.

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1 (3) When knowing and willful fraud or false
2 representation in the application is established by clear and
3 convincing evidence.

4 Section 6. This act shall take effect July 1, 2000.

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7 SENATE SUMMARY

8 Amends various provisions of law relating to viatical
9 settlements. Provides criminal penalties for viatical
10 settlement provider licensees and viatical settlement
11 broker licensees who fail to make records available for
12 examination by the Department of Insurance. Requires a
13 disclosure of the identity of the author of a viator's
14 Mortality Profile Report and his or her relationship to
15 all parties in the viatication transaction. Provides for
16 the waiver of a viator's constitutional right to privacy
17 relating to medical records. Requires a viatical
18 settlement provider to notify the insurer who issued the
19 policy of the policy's viatication within a prescribed
20 time. Prohibits certain acts relating to brokering or
21 otherwise dealing in viatical settlement contracts.
22 Provides criminal penalties. Provides an incontestability
23 exception.