

1 A bill to be entitled
2 An act relating to viatical settlement contracts;
3 amending s. 626.9911, F.S.; defining the terms
4 "fraudulent viatical settlement act" and "recklessly"
5 for purposes of provisions relating to the Viatical
6 Settlement Act; amending ss. 626.9924 and 626.99245,
7 F.S.; conforming cross-references; amending s.
8 626.99275, F.S.; providing additional prohibited acts
9 related to viatical settlement contracts; amending s.
10 626.99287, F.S.; extending the period in which
11 viatical settlement contracts are void and
12 unenforceable; revising conditions and requirements in
13 which viatical settlement contracts entered into
14 within a specified time period are valid and
15 enforceable; deleting provisions related to the
16 transfer of insurance policies or certificates to
17 viatical settlement providers; creating s. 626.99289,
18 F.S.; defining the term "stranger-originated life
19 insurance practice"; providing that specified acts and
20 transactions relating to stranger-originated life
21 insurance practices are void and unenforceable;
22 authorizing a life insurer to contest policies
23 obtained through such practices; providing an
24 effective date.
25

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

27
 28 Section 1. Subsections (2) through (14) of section
 29 626.9911, Florida Statutes, are renumbered as subsections (3)
 30 through (15), respectively, and a new subsection (2) is added to
 31 that section to read:

32 626.9911 Definitions.—As used in this act, the term:

33 (2) "Fraudulent viatical settlement act" means an act or
 34 omission of a person or the person's employees or agents who
 35 knowingly or with the intent to defraud, for the purpose of
 36 depriving another of property or for pecuniary gain:

37 (a) Presents, causes to be presented, or prepares with the
 38 knowledge or belief a document or information listed in this
 39 paragraph knowing that the document or information contains
 40 false or concealed material information as part of, in support
 41 of, or concerning a fact that is material to it:

42 1. An application for the issuance of a viatical
 43 settlement contract or an insurance policy.

44 2. The underwriting of a viatical settlement contract or
 45 an insurance policy.

46 3. A claim for payment or benefit pursuant to a viatical
 47 settlement contract or an insurance policy.

48 4. A premium paid on an insurance policy.

49 5. A change in ownership or beneficiary for a viatical
 50 settlement contract or an insurance policy.

- 51 6. The reinstatement or conversion of an insurance policy.
- 52 7. The solicitation, offer, effectuation, or sale of a
 53 viatical settlement contract or an insurance policy.
- 54 8. The written evidence of a viatical settlement contract
 55 or an insurance policy.
- 56 9. A financing transaction.
- 57 (b) Uses a plan, financial structure, device, scheme, or
 58 artifice to defraud another person in a viatical settlement
 59 contract.
- 60 (c) Engages in a stranger-originated life insurance
 61 practice in violation of s. 626.99289.
- 62 (d) Fails to disclose upon request by a viatical
 63 settlement provider that the prospective insured's life
 64 expectancy has been evaluated by a person other than the
 65 provider or its authorized representatives in connection with
 66 the issuance of the contract.
- 67 (e) Perpetuates a fraud or prevents the detection of a
 68 fraud by:
- 69 1. Removing, concealing, altering, destroying, or
 70 sequestering the assets or records of a licensee or other person
 71 engaged in the business of viatical settlements from the office.
- 72 2. Misrepresenting or concealing the financial condition
 73 of a licensee, financing entity, insurer, or other person.
- 74 3. Transacting business relating to viatical settlement
 75 contracts in violation of this part.

76 4. Filing with the office or the equivalent chief
 77 insurance regulatory official of another jurisdiction documents
 78 that contain false information or concealing information about a
 79 material fact from the office or such other regulatory official.

80 (f) Embezzles, steals, or misappropriates moneys, funds,
 81 premiums, credits, or other property of a viatical settlement
 82 provider, insurer, insured, viator, insurance policyholder, or
 83 other person engaged in the business of viatical settlement
 84 contracts or insurance.

85 (g) Recklessly enters, negotiates, brokers, or otherwise
 86 deals in a viatical settlement contract based on false or
 87 misleading information to defraud the policy's issuer, a
 88 viatical settlement provider, or a viator. As used in this
 89 paragraph, the term "recklessly" means an act or failure to act
 90 with conscious disregard of the relevant facts or risks that
 91 grossly deviates from acceptable standards of conduct.

92 (h) Facilitates in the change of a viator's state of
 93 residency from this state to another state by transferring the
 94 ownership of an insurance policy to a trust or other instruments
 95 to avoid requirements of this part.

96 (i) Applies for or obtains a loan that is secured directly
 97 or indirectly by an interest in a life insurance policy.

98 (j) Attempts to commit, assists, aids, or abets in the
 99 commission of or conspires to commit an act or omission
 100 described in this subsection.

101 Section 2. Subsection (7) of section 626.9924, Florida
 102 Statutes, is amended to read:

103 626.9924 Viatical settlement contracts; procedures;
 104 rescission.—

105 (7) At any time during the contestable period, within 20
 106 days after a viator executes documents necessary to transfer
 107 rights under an insurance policy or within 20 days of any
 108 agreement, option, promise, or any other form of understanding,
 109 express or implied, to viaticate the policy, the provider must
 110 give notice to the insurer of the policy that the policy has or
 111 will become a viaticated policy. The notice must be accompanied
 112 by the documents required by s. 626.99287 ~~626.99287(5)(a)~~ in
 113 ~~their entirety~~.

114 Section 3. Subsection (2) of section 626.99245, Florida
 115 Statutes, is amended to read:

116 626.99245 Conflict of regulation of viaticals.—

117 (2) This section does not affect the requirement of ss.
 118 626.9911(13) ~~626.9911(12)~~ and 626.9912(1) that a viatical
 119 settlement provider doing business from this state must obtain a
 120 viatical settlement license from the office. As used in this
 121 subsection, the term "doing business from this state" includes
 122 effectuating viatical settlement contracts from offices in this
 123 state, regardless of the state of residence of the viator.

124 Section 4. Subsection (1) of section 626.99275, Florida
 125 Statutes, is amended to read:

126 | 626.99275 Prohibited practices; penalties.—

127 | (1) It is unlawful for a any person to:

128 | (a) ~~¶~~ Knowingly enter into, broker, or otherwise deal in
 129 | a viatical settlement contract the subject of which is a life
 130 | insurance policy, knowing that the policy was obtained by
 131 | presenting materially false information concerning any fact
 132 | material to the policy or by concealing, for the purpose of
 133 | misleading another, information concerning any fact material to
 134 | the policy, where the viator or the viator's agent intended to
 135 | defraud the policy's issuer.

136 | (b) ~~¶~~ Knowingly or with the intent to defraud, for the
 137 | purpose of depriving another of property or for pecuniary gain,
 138 | issue or use a pattern of false, misleading, or deceptive life
 139 | expectancies.

140 | (c) ~~¶~~ Knowingly engage in any transaction, practice, or
 141 | course of business intending thereby to avoid the notice
 142 | requirements of s. 626.9924(7).

143 | (d) ~~¶~~ Knowingly or intentionally facilitate the change of
 144 | state of residency of a viator to avoid the provisions of this
 145 | chapter.

146 | (e) Knowingly enter into a viatical settlement contract
 147 | before the application for or issuance of a viaticated policy,
 148 | or within 5 years after the date of the viaticated policy unless
 149 | the viator complied with s. 626.99287.

150 | (f) Engage in a fraudulent viatical settlement act, as

151 defined in s. 626.9911.

152 (g) Knowingly issue, solicit, market, or otherwise promote
153 the purchase of a life insurance policy for the purpose of, or
154 with an emphasis on, selling the policy.

155 (h) Engage in a stranger-originated life insurance
156 practice as provided in s. 626.99289.

157 Section 5. Section 626.99287, Florida Statutes, is amended
158 to read:

159 626.99287 Contestability of viaticated policies.—Except as
160 hereinafter provided, if a viatical settlement contract is
161 entered into within 5 years after ~~the 2-year period commencing~~
162 ~~with~~ the date of issuance of the insurance policy or certificate
163 to be acquired, the viatical settlement contract is void and
164 unenforceable by either party. However ~~Notwithstanding this~~
165 ~~limitation~~, such a viatical settlement contract is not void and
166 unenforceable if the viator provides a sworn affidavit with
167 supporting documentation to a viatical settlement provider that
168 certifies one or more of the following conditions apply within 5
169 years after the date of issuance of the insurance policy or
170 certificate:

171 (1) The policy was issued upon the owner's exercise of
172 conversion rights arising out of a group or term policy that has
173 been in effect for at least 60 months. The time covered under a
174 group policy is calculated without regard to change in insurance
175 carriers if the coverage has been continuous and under the same

176 group sponsorship.

177 (2) The owner of the policy is a charitable organization
 178 exempt from taxation under 26 U.S.C. s. 501(c) (3).

179 (3) The owner of the policy is not a natural person.

180 ~~(4) The viatical settlement contract was entered into
 181 before July 1, 2000;~~

182 (4)~~(5)~~ The viator certifies by producing independent
 183 evidence to the viatical settlement provider that one or more of
 184 the following conditions apply within 5 years after the date of
 185 issuance of the insurance policy or certificate ~~have been met~~
 186 ~~within the 2-year period:~~

187 (a)~~1.~~ The viator or insured is terminally or chronically
 188 ill ~~diagnosed with an illness or condition that is either:~~

189 a. ~~Catastrophic or life threatening; or~~

190 b. ~~Requires a course of treatment for a period of at least~~
 191 ~~3 years of long-term care or home health care; and~~

192 ~~2.~~ the condition was not known to the insured at the time
 193 the life insurance contract was entered into;

194 (b) The viator's spouse dies;

195 (c) The viator divorces his or her spouse;

196 (d) The viator retires from full-time employment;

197 (e) The viator becomes physically or mentally disabled and
 198 a physician determines that the disability prevents the viator
 199 from maintaining full-time employment;

200 (f) The owner of the policy was the insured's employer at

201 the time the policy or certificate was issued and the employment
202 relationship terminated;

203 (g) A final order, judgment, or decree is entered by a
204 court of competent jurisdiction, on the application of a
205 creditor of the viator, adjudicating the viator bankrupt or
206 insolvent, or approving a petition seeking reorganization of the
207 viator or appointing a receiver, trustee, or liquidator to all
208 or a substantial part of the viator's assets; or

209 (h) The viator experiences a significant decrease in
210 income which is unexpected by the viator and which impairs his
211 or her reasonable ability to pay the policy premium.

212 (5) The viator entered into a viatical settlement contract
213 2 years after the viaticated policy's issuance date and during
214 that period, the viator:

215 (a) Continuously funded the policy premiums exclusively
216 with unencumbered assets of the viator, which may include the
217 net surrender value of the life insurance policy being financed.

218 (b) Did not enter into an agreement or understanding with
219 another person to guarantee the liability, purchase, assumption,
220 or forgiveness of a loan on a viatical settlement contract or a
221 viaticated policy.

222 (c) The insured and the policy were not evaluated for
223 settlement.

224

225 ~~If the viatical settlement provider submits to the insurer a~~

226 ~~copy of the viator's or owner's certification described above,~~
227 ~~then the provider submits a request to the insurer to effect the~~
228 ~~transfer of the policy or certificate to the viatical settlement~~
229 ~~provider, the viatical settlement agreement shall not be void or~~
230 ~~unenforceable by operation of this section. The insurer shall~~
231 ~~timely respond to such request. Nothing in this section shall~~
232 ~~prohibit an insurer from exercising its right during the~~
233 ~~contestability period to contest the validity of any policy on~~
234 ~~grounds of fraud.~~

235 Section 6. Section 626.99289, Florida Statutes, is created
236 to read:

237 626.99289 Stranger-originated life insurance.—

238 (1) As used in this section, the term "stranger-originated
239 life insurance practice" means an act, practice, arrangement, or
240 agreement to initiate a life insurance policy for the benefit of
241 a third-party investor who does not have an insurable interest
242 in the insured at the time the policy originated. Stranger-
243 originated life insurance practices include, but are not limited
244 to:

245 (a) The purchase of a life insurance policy with resources
246 or guarantees from or through a person who, at the time of such
247 policy's inception, is not lawfully able to execute an
248 arrangement or agreement to directly or indirectly transfer the
249 ownership, or benefits of such a policy to a third-party.

250 (b) The creation of a trust or other entity intended to

251 create the appearance of having an insurable interest that
252 would, if such an entity had such an interest, allow the trust
253 or entity to initiate and execute a life insurance policy, when
254 the entity has no such interest.

255 (2) Notwithstanding s. 627.455, a written or verbal
256 contract, agreement, arrangement, or transaction, including, but
257 not limited to, a financing agreement, arrangement, or
258 understanding, entered into to further or aid a stranger-
259 originated life insurance practice is void and unenforceable.

260 (3) A life insurer may contest a life insurance policy
261 that was obtained by a stranger-originated life insurance
262 practice.

263 Section 7. This act shall take effect upon becoming a law.