



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 "stranger-
5 originated life insurance practice" for purposes of
6 provisions relating to the Viatical Settlement Act;
7 amending ss. 626.9924 and 626.99245, F.S.; conforming
8 cross-references; amending s. 626.99275, F.S.;
9 providing additional prohibited acts related to
10 viatical settlement contracts; amending s. 626.99287,
11 F.S.; extending the period in which viatical
12 settlement contracts are void and enforceable under
13 certain circumstances; revising conditions and
14 requirements in which viatical settlement contracts
15 entered into within a specified time period are valid
16 and enforceable; deleting provisions related to the
17 transfer of insurance policies or certificates to
18 viatical settlement providers; creating s. 626.99289,
19 F.S.; providing that specified acts and transactions
20 relating to stranger-originated life insurance
21 practices are void and unenforceable; creating s.
22 626.99290, F.S.; authorizing a life insurer to contest
23 policies 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 (8) of section
29 626.9911, Florida Statutes, are renumbered as subsections (3)
30 through (9), respectively, subsections (9) through (14) of that
31 section are renumbered as subsections (11) through (16),
32 respectively, and new subsections (2) and (10) are added to that
33 section, to read:

34 626.9911 Definitions.—As used in this act, the term:

35 (2) "Fraudulent viatical settlement act" means an act or
36 omission committed by a person who knowingly, or with intent to
37 defraud for the purpose of depriving another of property or for
38 pecuniary gain, commits or allows an employee or agent to commit
39 one of the following acts:

40 (a) Presenting, causing to be presented, or preparing with
41 the knowledge or belief that it will be presented to or by
42 another person, false or concealed material information as part
43 of, in support of, or concerning a fact material to:

44 1. An application for the issuance of a viatical settlement
45 contract or a life insurance policy;

46 2. The underwriting of a viatical settlement contract or a
47 life insurance policy;

48 3. A claim for payment or benefit pursuant to a viatical
49 settlement contract or a life insurance policy;

50 4. Premiums paid on a life insurance policy;



51 5. Payments and changes in ownership or beneficiary made
52 in accordance with the terms of a viatical settlement contract or
53 a life insurance policy;

54 6. The reinstatement or conversion of a life insurance
55 policy;

56 7. The solicitation, offer, effectuation, or sale of a
57 viatical settlement contract or a life insurance policy;

58 8. The issuance of written evidence of a viatical
59 settlement contract or a life insurance policy; or

60 9. A financing transaction for a viatical settlement
61 contract or life insurance policy.

62 (b) Employing a plan, financial structure, device, scheme,
63 or artifice relating to viaticated policies for the purpose of
64 perpetrating fraud.

65 (c) Engaging in a stranger-originated life insurance
66 practice.

67 (d) Failing to disclose, upon request by an insurer, that
68 the prospective insured has undergone a life expectancy
69 evaluation by a person other than the insurer or its authorized
70 representatives in connection with the issuance of the life
71 insurance policy.

72 (e) Perpetuating a fraud or preventing the detection of a
73 fraud by:

74 1. Removing, concealing, altering, destroying, or
75 sequestering from the office the assets or records of a licensee



76 or other person engaged in the business of viatical settlements;

77 2. Misrepresenting or concealing the financial condition of
78 a licensee, financing entity, insurer, or other person;

79 3. Transacting in the business of viatical settlements in
80 violation of laws requiring a license, certificate of authority,
81 or other legal authority to transact such business; or

82 4. Filing with the office or the equivalent chief insurance
83 regulatory official of another jurisdiction a document that
84 contains false information or conceals information about a
85 material fact from the office or other regulatory official.

86 (f) Embezzlement, theft, misappropriation, or conversion of
87 moneys, funds, premiums, credits, or other property of a viatical
88 settlement provider, insurer, insured, viator, insurance
89 policyowner, or other person engaged in the business of viatical
90 settlements or life insurance.

91 (g) Entering into, negotiating, brokering, or otherwise
92 dealing in a viatical settlement contract, the subject of which
93 is a life insurance policy that was obtained based on information
94 that was falsified or concealed for the purpose of defrauding the
95 policy's issuer, viatical settlement provider, or viator.

96 (h) Facilitating the viator's change of residency state to
97 avoid the provisions of this act.

98 (i) Facilitating or causing the creation of a trust with a
99 situs outside this state or of another nonresident entity for the
100 purpose of owning a life insurance policy covering a Florida



101 resident to avoid the provisions of this act.

102 (j) Facilitating or causing the transfer of the ownership
103 of an insurance policy covering a Florida resident to a trust
104 with a situs outside this state or to another nonresident entity
105 to avoid the provisions of this act.

106 (k) Applying for or obtaining a loan that is secured
107 directly or indirectly by an interest in a life insurance policy.

108 (l) Attempting to commit, assisting, aiding, or abetting in
109 the commission of, or conspiring to commit, an act or omission
110 specified in this subsection.

111 (10) "Stranger-originated life insurance practice" means
112 an act, practice, arrangement, or agreement to initiate a life
113 insurance policy for the benefit of a third-party investor who,
114 at the time of policy origination, has no insurable interest in
115 the insured. Stranger-originated life insurance practices
116 include, but are not limited to:

117 (a) The purchase of a life insurance policy with resources
118 or guarantees from or through a person who, at the time of such
119 policy's inception, could not lawfully initiate the policy and
120 the execution of a verbal or written arrangement or agreement to
121 directly or indirectly transfer the ownership of such policy or
122 policy benefits to a third party.

123 (b) The creation of a trust or other entity that has the
124 appearance of an insurable interest in order to initiate
125 policies for investors, in violation of insurable interest laws



126 | and the prohibition against wagering on life.

127 | Section 2. Subsection (7) of section 626.9924, Florida
128 | Statutes, is amended to read:

129 | 626.9924 Viatical settlement contracts; procedures;
130 | rescission.—

131 | (7) At any time during the contestable period, within 20
132 | days after a viator executes documents necessary to transfer
133 | rights under an insurance policy or within 20 days of any
134 | agreement, option, promise, or any other form of understanding,
135 | express or implied, to viaticate the policy, the provider must
136 | give notice to the insurer of the policy that the policy has or
137 | will become a viaticated policy. The notice must be accompanied
138 | by the documents required by s. 626.99287 ~~626.99287(5)(a)~~ ~~in~~
139 | ~~their entirety.~~

140 | Section 3. Subsection (2) of section 626.99245, Florida
141 | Statutes, is amended to read:

142 | 626.99245 Conflict of regulation of viaticals.—

143 | (2) This section does not affect the requirement of ss.
144 | 626.9911(14) ~~626.9911(12)~~ and 626.9912(1) that a viatical
145 | settlement provider doing business from this state must obtain a
146 | viatical settlement license from the office. As used in this
147 | subsection, the term "doing business from this state" includes
148 | effectuating viatical settlement contracts from offices in this
149 | state, regardless of the state of residence of the viator.

150 | Section 4. Subsection (1) of section 626.99275, Florida



151 Statutes, is amended to read:

152 626.99275 Prohibited practices; penalties.—

153 (1) It is unlawful for a ~~any~~ person to:

154 (a) ~~To~~ Knowingly enter into, broker, or otherwise deal in
155 a viatical settlement contract the subject of which is a life
156 insurance policy, knowing that the policy was obtained by
157 presenting materially false information concerning any fact
158 material to the policy or by concealing, for the purpose of
159 misleading another, information concerning any fact material to
160 the policy, where the viator or the viator's agent intended to
161 defraud the policy's issuer.

162 (b) ~~To~~ Knowingly or with the intent to defraud, for the
163 purpose of depriving another of property or for pecuniary gain,
164 issue or use a pattern of false, misleading, or deceptive life
165 expectancies.

166 (c) ~~To~~ Knowingly engage in any transaction, practice, or
167 course of business intending thereby to avoid the notice
168 requirements of s. 626.9924(7).

169 (d) ~~To~~ Knowingly or intentionally facilitate the change of
170 state of residency of a viator to avoid the provisions of this
171 chapter.

172 (e) Knowingly enter into a viatical settlement contract
173 before the application for or issuance of a life insurance
174 policy that is the subject of a viatical settlement contract or
175 during the applicable period of time stated in s. 626.99287(1)



176 | or (2), unless the viator provides a sworn affidavit and
177 | accompanying independent evidentiary documentation in accordance
178 | with s. 626.99287.

179 | (f) Engage in a fraudulent viatical settlement act, as
180 | defined in s. 626.9911.

181 | (g) Knowingly issue, solicit, market, or otherwise promote
182 | the purchase of a life insurance policy for the purpose of or
183 | with an emphasis on selling the policy to a third party.

184 | (h) Engage in a stranger-originated life insurance
185 | practice, as defined in s. 626.9911.

186 | Section 5. Section 626.99287, Florida Statutes, is amended
187 | to read:

188 | 626.99287 Contestability of viaticated policies.—

189 | (1) Except as hereinafter provided, if a viatical
190 | settlement contract is entered into within the 2-year period
191 | commencing ~~on~~ ~~with~~ the date of issuance of the insurance policy
192 | or certificate to be acquired, the viatical settlement contract
193 | is void and unenforceable by either party.

194 | (2) Except as hereinafter provided, if a viaticated policy
195 | is subject to a loan secured directly or indirectly by an
196 | interest in the policy within a 5-year period commencing on the
197 | date of issuance of the policy or certificate, the viatical
198 | settlement contract is void and unenforceable by either party.

199 | (3) Notwithstanding the limitations in subsections (1) and
200 | (2) ~~this limitation, such~~ a viatical settlement contract is not



201 void and unenforceable if the viator provides a sworn affidavit
202 and accompanying independent evidentiary documentation
203 certifying to the viatical settlement provider that one or more
204 of the following conditions were met during the periods
205 applicable to the viaticated policy as stated in subsection (1)
206 or subsection (2):

207 (a)(1) The policy was issued upon the owner's exercise of
208 conversion rights arising out of a group or term policy, if the
209 total time covered under the prior policy is at least 60 months.
210 The time covered under a group policy shall be calculated
211 without regard to any change in insurance carriers, provided the
212 coverage has been continuous and under the same group
213 sponsorship.

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

216 ~~(3) The owner of the policy is not a natural person;~~
217 ~~(4) The viatical settlement contract was entered into~~
218 ~~before July 1, 2000;~~

219 (c)(5) The viator certifies by producing independent
220 evidence to the viatical settlement provider that one or more of
221 the following conditions were have been met within the 2-year
222 period:

223 ~~(a)1. The viator or insured is terminally or chronically~~
224 ~~ill diagnosed with an illness or condition that is either:~~
225 ~~a. Catastrophic or life threatening; or~~



226 ~~b. Requires a course of treatment for a period of at least~~
227 ~~3 years of long term care or home health care; and~~
228 ~~2. the condition was not known to the insured at the time~~
229 ~~the life insurance contract was entered into;.~~
230 2.(b) The viator's spouse dies;
231 3.(e) The viator divorces his or her spouse;
232 4.(d) The viator retires from full-time employment;
233 5.(e) The viator becomes physically or mentally disabled
234 and a physician determines that the disability prevents the
235 viator from maintaining full-time employment;
236 6.(f) The owner of the policy was the insured's employer
237 at the time the policy or certificate was issued and the
238 employment relationship terminated;
239 7.(g) A final order, judgment, or decree is entered by a
240 court of competent jurisdiction, on the application of a
241 creditor of the viator, adjudicating the viator bankrupt or
242 insolvent, or approving a petition seeking reorganization of the
243 viator or appointing a receiver, trustee, or liquidator to all
244 or a substantial part of the viator's assets; or
245 8.(h) The viator experiences a significant decrease in
246 income which is unexpected by the viator and which impairs his
247 or her reasonable ability to pay the policy premium.
248 (d) The viator entered into a viatical settlement contract
249 more than 2 years after the policy's issuance date and, with
250 respect to the policy, at all times before the date that is 2



251 years after policy issuance, each of the following conditions
252 are met:

253 1. Policy premiums have been funded exclusively with
254 unencumbered assets, including an interest in the life insurance
255 policy being financed only to the extent of its net cash
256 surrender value, provided by, or fully recourse liability
257 incurred by, the insured;

258 2. There is no agreement or understanding with any other
259 person to guarantee any such liability or to purchase, or stand
260 ready to purchase, the policy, including through an assumption
261 or forgiveness of the loan; and

262 3. Neither the insured nor the policy has been evaluated
263 for settlement.

264
265 ~~If the viatical settlement provider submits to the insurer a~~
266 ~~copy of the viator's or owner's certification described above,~~
267 ~~then the provider submits a request to the insurer to effect the~~
268 ~~transfer of the policy or certificate to the viatical settlement~~
269 ~~provider, the viatical settlement agreement shall not be void or~~
270 ~~unenforceable by operation of this section. The insurer shall~~
271 ~~timely respond to such request. Nothing in this section shall~~
272 ~~prohibit an insurer from exercising its right during the~~
273 ~~contestability period to contest the validity of any policy on~~
274 ~~grounds of fraud.~~

275 Section 6. Section 626.99289, Florida Statutes, is created



CS/HB 1205, Engrossed 1

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276 to read:

277 626.99289 Void and unenforceable contracts, agreements,
278 arrangements, and transactions.—Notwithstanding s. 627.455, a
279 contract, agreement, arrangement, or transaction, including, but
280 not limited to, a financing agreement or any other arrangement or
281 understanding entered into, whether written or verbal, for the
282 furtherance or aid of a stranger-originated life insurance
283 practice is void and unenforceable.

284 Section 7. Section 626.99290, Florida Statutes, is created
285 to read:

286 626.99290 Contestability of life insurance policies.—
287 Notwithstanding s. 627.455, a life insurer may contest a life
288 insurance policy if the policy was obtained by a stranger-
289 originated life insurance practice, as defined in s. 626.9911.

290 Section 8. This act shall take effect upon becoming a law.