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LEGISLATIVE ACTION

| Senate | . | House |
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| Comm: RCS | . | |
| 03/27/2017 | . | |
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The Committee on Banking and Insurance (Young) recommended the following:

Senate Amendment (with title amendment)

Delete everything after the enacting clause
and insert:

Section 1. Subsections (2) through (7) of section 626.9911, Florida Statutes, are renumbered as subsections (3) through (8), respectively, present subsections (8) through (14) of that section are renumbered as subsections (10) through (16), respectively, and new subsections (2) and (9) are added to that section, to read:



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11 626.9911 Definitions.—As used in this act, the term:

12 (2) "Fraudulent viatical settlement act" means an act or
13 omission committed by a person who knowingly, or with intent to
14 defraud for the purpose of depriving another of property or for
15 pecuniary gain, commits or allows an employee or agent to commit
16 any of the following acts:

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

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

23 2. The underwriting of a viatical settlement contract or a
24 life insurance policy;

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

27 4. Premiums paid on a life insurance policy;

28 5. Payments and changes in ownership or beneficiary made in
29 accordance with the terms of a viatical settlement contract or a
30 life insurance policy;

31 6. The reinstatement or conversion of a life insurance
32 policy;

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

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

37 9. A financing transaction for a viatical settlement
38 contract or life insurance policy.

39 (b) Employing a plan, financial structure, device, scheme,



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40 or artifice relating to viaticated policies for the purpose of
41 perpetrating fraud.

42 (c) Engaging in a stranger-originated life insurance
43 practice.

44 (d) Failing to disclose, upon request by an insurer, that
45 the prospective insured has undergone a life expectancy
46 evaluation by a person other than the insurer or its authorized
47 representatives in connection with the issuance of the life
48 insurance policy.

49 (e) Perpetuating a fraud or preventing the detection of a
50 fraud by:

51 1. Removing, concealing, altering, destroying, or
52 sequestering from the office the assets or records of a licensee
53 or other person engaged in the business of viatical settlements;

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

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

59 4. Filing with the office or the equivalent chief insurance
60 regulatory official of another jurisdiction a document that
61 contains false information or conceals information about a
62 material fact from the office or other regulatory official.

63 (f) Embezzlement, theft, misappropriation, or conversion of
64 moneys, funds, premiums, credits, or other property of a
65 viatical settlement provider, insurer, insured, viator,
66 insurance policyowner, or other person engaged in the business
67 of viatical settlements or life insurance.

68 (g) Entering into, negotiating, brokering, or otherwise



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69 dealing in a viatical settlement contract, the subject of which
70 is a life insurance policy that was obtained based on
71 information that was falsified or concealed for the purpose of
72 defrauding the policy's issuer, viatical settlement provider, or
73 viator.

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

76 (i) Facilitating or causing the creation of a trust with a
77 non-Florida or other nonresident entity for the purpose of
78 owning a life insurance policy covering a Florida resident to
79 avoid the provisions of this act.

80 (j) Facilitating or causing the transfer of the ownership
81 of an insurance policy covering a Florida resident to a trust
82 with a situs outside this state or to another nonresident entity
83 to avoid the provisions of this act.

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

87 (l) Attempting to commit, assisting, aiding, or abetting in
88 the commission of, or conspiring to commit, an act or omission
89 specified in this subsection.

90 (9) "Stranger-originated life insurance practice" means an
91 act, practice, arrangement, or agreement to initiate a life
92 insurance policy for the benefit of a third-party investor who,
93 at the time of policy origination, has no insurable interest in
94 the insured. Stranger-originated life insurance practices
95 include, but are not limited to:

96 (a) The purchase of a life insurance policy with resources
97 or guarantees from or through a person who, at the time of such



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98 policy's inception, could not lawfully initiate the policy and
99 the execution of a verbal or written arrangement or agreement to
100 directly or indirectly transfer the ownership of such policy or
101 policy benefits to a third party.

102 (b) The creation of a trust or other entity that has the
103 appearance of an insurable interest in order to initiate
104 policies for investors, in violation of insurable interest laws
105 and the prohibition against wagering on life.

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

108 626.9924 Viatical settlement contracts; procedures;
109 rescission.-

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

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

121 626.99245 Conflict of regulation of viaticals.-

122 (2) This section does not affect the requirement of ss.
123 626.9911(14) ~~626.9911(12)~~ and 626.9912(1) that a viatical
124 settlement provider doing business from this state must obtain a
125 viatical settlement license from the office. As used in this
126 subsection, the term "doing business from this state" includes



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127 effectuating viatical settlement contracts from offices in this
128 state, regardless of the state of residence of the viator.

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

131 626.99275 Prohibited practices; penalties.—

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

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

141 (b) ~~¶~~ Knowingly or with the intent to defraud, for the
142 purpose of depriving another of property or for pecuniary gain,
143 issue or use a pattern of false, misleading, or deceptive life
144 expectancies.

145 (c) ~~¶~~ Knowingly engage in any transaction, practice, or
146 course of business intending thereby to avoid the notice
147 requirements of s. 626.9924(7).

148 (d) ~~¶~~ Knowingly or intentionally facilitate the change of
149 state of residency of a viator to avoid the provisions of this
150 chapter.

151 (e) Knowingly enter into a viatical settlement contract
152 before the application for or issuance of a life insurance
153 policy that is the subject of a viatical settlement contract or
154 during the 5-year period commencing on the date of issuance of
155 the policy or certificate, unless the viator provides a sworn



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156 affidavit and accompanying documentation in accordance with s.
157 626.99287.

158 (f) Engage in a fraudulent viatical settlement act, as
159 defined in s. 626.9911.

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

163 (h) Engage in a stranger-originated life insurance
164 practice, as defined in s. 626.9911.

165 Section 5. Section 626.99287, Florida Statutes, is amended
166 to read:

167 626.99287 Contestability of viaticated policies.—Except as
168 hereinafter provided, if a viatical settlement contract is
169 entered into during ~~within~~ the 5-year ~~2-year~~ period commencing
170 on ~~with~~ the date of issuance of the insurance policy or
171 certificate to be acquired, the viatical settlement contract is
172 void and unenforceable by either party. Notwithstanding this
173 limitation, such a viatical settlement contract is not void and
174 unenforceable if the viator provides a sworn affidavit and
175 accompanying independent evidentiary documentation certifying to
176 the viatical settlement provider that one or more of the
177 following conditions were met during the 5-year period:

178 (1) The policy was issued upon the owner's exercise of
179 conversion rights arising out of a group or term policy, if the
180 total time covered under the prior policy is at least 60 months.
181 The time covered under a group policy shall be calculated
182 without regard to any change in insurance carriers, provided the
183 coverage has been continuous and under the same group
184 sponsorship.†



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

187 (3) The owner of the policy is not a natural person.~~†~~

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

190 ~~(4)(5) The viator certifies by producing independent~~
191 ~~evidence to the viatical settlement provider that one or more of~~
192 ~~the following conditions have been met within the 2-year period:~~

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

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

196 ~~b. Requires a course of treatment for a period of at least~~
197 ~~3 years of long-term care or home health care; and~~

198 ~~2. the condition was not known to the insured at the time~~
199 ~~the life insurance contract was entered into.~~

200 ~~(5)(b) The viator's spouse dies.~~†~~~~

201 ~~(6)(c) The viator divorces his or her spouse.~~†~~~~

202 ~~(7)(d) The viator retires from full-time employment.~~†~~~~

203 ~~(8)(e) The viator becomes physically or mentally disabled~~
204 ~~and a physician determines that the disability prevents the~~
205 ~~viator from maintaining full-time employment.~~†~~~~

206 ~~(9)(f) The owner of the policy was the insured's employer~~
207 ~~at the time the policy or certificate was issued and the~~
208 ~~employment relationship terminated.~~†~~~~

209 ~~(10)(g) A final order, judgment, or decree is entered by a~~
210 ~~court of competent jurisdiction, on the application of a~~
211 ~~creditor of the viator, adjudicating the viator bankrupt or~~
212 ~~insolvent, or approving a petition seeking reorganization of the~~
213 ~~viator or appointing a receiver, trustee, or liquidator to all~~



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214 or a substantial part of the viator's assets. ~~;~~ ~~or~~

215 (11) ~~(h)~~ The viator experiences a significant decrease in
216 income which is unexpected by the viator and which impairs his
217 or her reasonable ability to pay the policy premium.

218 (12) The viator entered into a viatical settlement contract
219 more than 2 years after the policy's issuance date and, with
220 respect to the policy, at all times before the date that is 2
221 years after policy issuance, each of the following conditions
222 are met:

223 (a) Policy premiums have been funded exclusively with
224 unencumbered assets, including an interest in the life insurance
225 policy being financed only to the extent of its net cash
226 surrender value, provided by, or fully recourse liability
227 incurred by, the insured;

228 (b) There is no agreement or understanding with any other
229 person to guarantee any such liability or to purchase, or stand
230 ready to purchase, the policy, including through an assumption
231 or forgiveness of the loan; and

232 (c) Neither the insured nor the policy has been evaluated
233 for settlement.

234
235 ~~If the viatical settlement provider submits to the insurer a~~
236 ~~copy of the viator's or owner's certification described above,~~
237 ~~then the provider submits a request to the insurer to effect the~~
238 ~~transfer of the policy or certificate to the viatical settlement~~
239 ~~provider, the viatical settlement agreement shall not be void or~~
240 ~~unenforceable by operation of this section. The insurer shall~~
241 ~~timely respond to such request. Nothing in this section shall~~
242 ~~prohibit an insurer from exercising its right during the~~



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243 ~~contestability period to contest the validity of any policy on~~
244 ~~grounds of fraud.~~

245 Section 6. Section 626.99289, Florida Statutes, is created
246 to read:

247 626.99289 Void and unenforceable contracts, agreements,
248 arrangements, and transactions.—Notwithstanding s. 627.455, a
249 contract, agreement, arrangement, or transaction, including, but
250 not limited to, a financing agreement or any other arrangement
251 or understanding entered into, whether written or verbal, for
252 the furtherance or aid of a stranger-originated life insurance
253 practice is void and unenforceable.

254 Section 7. Section 626.99290, Florida Statutes, is created
255 to read:

256 626.99290 Contestability of life insurance policies.—
257 Notwithstanding s. 627.455, a life insurer may contest a life
258 insurance policy if the policy was obtained by a stranger-
259 originated life insurance practice, as defined in s. 626.9911.

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

261
262 ===== T I T L E A M E N D M E N T =====

263 And the title is amended as follows:

264 Delete everything before the enacting clause
265 and insert:

266 A bill to be entitled
267 An act relating to viatical settlement contracts;
268 amending s. 626.9911, F.S.; defining the terms
269 "fraudulent viatical settlement act" and "stranger-
270 originated life insurance practice" for purposes of
271 provisions relating to the Viatical Settlement Act;



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272 amending ss. 626.9924 and 626.99245, F.S.; conforming
273 cross-references; amending s. 626.99275, F.S.;

274 providing additional prohibited acts related to
275 viatical settlement contracts; amending s. 626.99287,
276 F.S.; extending the period in which viatical
277 settlement contracts are void and unenforceable;
278 revising conditions and requirements in which viatical
279 settlement contracts entered into within a specified
280 time period are valid and enforceable; deleting
281 provisions related to the transfer of insurance
282 policies or certificates to viatical settlement
283 providers; creating s. 626.99289, F.S.; providing that
284 certain contracts, agreements, arrangements, or
285 transactions relating to stranger-originated life
286 insurance practices are void and unenforceable;
287 creating s. 626.99290, F.S.; authorizing a life
288 insurer to contest policies obtained through such
289 practices; providing an effective date.