

By Senator Young

18-01216-17

20171600__

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)

18-01216-17

20171600__

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 settlement
43 contract or an insurance policy.

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

18-01216-17

20171600__

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 settlement
63 provider that the prospective insured's life expectancy has been
64 evaluated by a person other than the provider or its authorized
65 representatives in connection with the issuance of the contract.

66 (e) Perpetuates a fraud or prevents the detection of a
67 fraud by:

68 1. Removing, concealing, altering, destroying, or
69 sequestering the assets or records of a licensee or other person
70 engaged in the business of viatical settlements from the office.

71 2. Misrepresenting or concealing the financial condition of
72 a licensee, financing entity, insurer, or other person.

73 3. Transacting business relating to viatical settlement
74 contracts in violation of this part.

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

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

84 (g) Recklessly enters, negotiates, brokers, or otherwise
85 deals in a viatical settlement contract based on false or
86 misleading information to defraud the policy's issuer, a
87 viatical settlement provider, or a viator. As used in this

18-01216-17

20171600__

88 paragraph, the term "recklessly" means an act or failure to act
89 with conscious disregard of the relevant facts or risks that
90 grossly deviates from acceptable standards of conduct.

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

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

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

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

102 626.9924 Viatical settlement contracts; procedures;
103 rescission.—

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

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

115 626.99245 Conflict of regulation of viaticals.—

116 (2) This section does not affect the requirement of ss.

18-01216-17

20171600__

117 626.9911(13) ~~626.9911(12)~~ and 626.9912(1) that a viatical
118 settlement provider doing business from this state must obtain a
119 viatical settlement license from the office. As used in this
120 subsection, the term "doing business from this state" includes
121 effectuating viatical settlement contracts from offices in this
122 state, regardless of the state of residence of the viator.

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

125 626.99275 Prohibited practices; penalties.-

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

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

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

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

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

145 (e) Knowingly enter into a viatical settlement contract

18-01216-17

20171600__

146 before the application for or issuance of a viaticated policy,
147 or within 5 years after the date of the viaticated policy unless
148 the viator complied with s. 626.99287.

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

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

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

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

158 626.99287 Contestability of viaticated policies.—Except as
159 hereinafter provided, if a viatical settlement contract is
160 entered into within 5 years after ~~the 2-year period commencing~~
161 ~~with~~ the date of issuance of the insurance policy or certificate
162 to be acquired, the viatical settlement contract is void and
163 unenforceable by either party. However ~~Notwithstanding this~~
164 ~~limitation~~, such a viatical settlement contract is not void and
165 unenforceable if the viator provides a sworn affidavit with
166 supporting documentation to a viatical settlement provider which
167 certifies one or more of the following conditions apply within 5
168 years after the date of issuance of the insurance policy or
169 certificate:

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

18-01216-17

20171600__

175 group sponsorship.~~†~~

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

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

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

181 (4)~~(5)~~ The viator certifies by producing independent
182 evidence to the viatical settlement provider that one or more of
183 the following conditions apply within 5 years after the date of
184 issuance of the insurance policy or certificate ~~have been met~~
185 ~~within the 2-year period:~~

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

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

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

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

193 (b) The viator's spouse dies;

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

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

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

199 (f) The owner of the policy was the insured's employer at
200 the time the policy or certificate was issued and the employment
201 relationship terminated;

202 (g) A final order, judgment, or decree is entered by a
203 court of competent jurisdiction, on the application of a

18-01216-17

20171600__

204 creditor of the viator, adjudicating the viator bankrupt or
205 insolvent, or approving a petition seeking reorganization of the
206 viator or appointing a receiver, trustee, or liquidator to all
207 or a substantial part of the viator's assets; or

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

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

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

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

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

223

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

18-01216-17

20171600__

233 ~~grounds of fraud.~~

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

236 626.99289 Stranger-originated life insurance.—

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

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

249 (b) The creation of a trust or other entity intended to
250 create the appearance of having an insurable interest that
251 would, if such an entity had such an interest, allow the trust
252 or entity to initiate and execute a life insurance policy, when
253 the entity has no such interest.

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

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

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