

By the Committee on Banking and Insurance; and Senators Young and Broxson

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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 unenforceable;
13 revising conditions and requirements in which viatical
14 settlement contracts entered into within a specified
15 time period are valid and enforceable; deleting
16 provisions related to the transfer of insurance
17 policies or certificates to viatical settlement
18 providers; creating s. 626.99289, F.S.; providing that
19 certain contracts, agreements, arrangements, or
20 transactions relating to stranger-originated life
21 insurance practices are void and unenforceable;
22 creating s. 626.99290, F.S.; authorizing a life
23 insurer to contest policies obtained through such
24 practices; providing an effective date.

25
26 Be It Enacted by the Legislature of the State of Florida:

27
28 Section 1. Subsections (2) through (7) of section 626.9911,
29 Florida Statutes, are renumbered as subsections (3) through (8),

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30 respectively, present subsections (8) through (14) of that
31 section are renumbered as subsections (10) through (16),
32 respectively, and new subsections (2) and (9) 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 any 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 in
52 accordance with the terms of a viatical settlement contract or a
53 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

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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

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88 viatical settlement provider, insurer, insured, viator,
89 insurance policyowner, or other person engaged in the business
90 of viatical 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
94 information that was falsified or concealed for the purpose of
95 defrauding the policy's issuer, viatical settlement provider, or
96 viator.

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

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

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

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

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

113 (9) "Stranger-originated life insurance practice" means an
114 act, practice, arrangement, or agreement to initiate a life
115 insurance policy for the benefit of a third-party investor who,
116 at the time of policy origination, has no insurable interest in

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117 the insured. Stranger-originated life insurance practices
118 include, but are not limited to:

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

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

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

131 626.9924 Viatical settlement contracts; procedures;
132 rescission.—

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

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

144 626.99245 Conflict of regulation of viaticals.—

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

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146 626.9911(14) ~~626.9911(12)~~ and 626.9912(1) that a viatical
147 settlement provider doing business from this state must obtain a
148 viatical settlement license from the office. As used in this
149 subsection, the term "doing business from this state" includes
150 effectuating viatical settlement contracts from offices in this
151 state, regardless of the state of residence of the viator.

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

154 626.99275 Prohibited practices; penalties.-

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

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

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

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

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

174 (e) Knowingly enter into a viatical settlement contract

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175 before the application for or issuance of a life insurance
176 policy that is the subject of a viatical settlement contract or
177 during the 5-year period commencing on the date of issuance of
178 the policy or certificate, unless the viator provides a sworn
179 affidavit and accompanying documentation in accordance with s.
180 626.99287.

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

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

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

188 Section 5. Section 626.99287, Florida Statutes, is amended
189 to read:

190 626.99287 Contestability of viaticated policies.—Except as
191 hereinafter provided, if a viatical settlement contract is
192 entered into during ~~within~~ the 5-year ~~2-year~~ period commencing
193 on ~~with~~ the date of issuance of the insurance policy or
194 certificate to be acquired, the viatical settlement contract is
195 void and unenforceable by either party. Notwithstanding this
196 limitation, such a viatical settlement contract is not void and
197 unenforceable if the viator provides a sworn affidavit and
198 accompanying independent evidentiary documentation certifying to
199 the viatical settlement provider that one or more of the
200 following conditions were met during the 5-year period:

201 (1) The policy was issued upon the owner's exercise of
202 conversion rights arising out of a group or term policy, if the
203 total time covered under the prior policy is at least 60 months.

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204 The time covered under a group policy shall be calculated
 205 without regard to any change in insurance carriers, provided the
 206 coverage has been continuous and under the same group
 207 sponsorship.~~†~~

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

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

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

213 ~~(4)(5) The viator certifies by producing independent~~
 214 ~~evidence to the viatical settlement provider that one or more of~~
 215 ~~the following conditions have been met within the 2-year period:~~

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

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

219 ~~b. Requires a course of treatment for a period of at least~~
 220 ~~3 years of long-term care or home health care; and~~

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

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

224 ~~(6)(e) The viator divorces his or her spouse.~~†

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

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

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

232 ~~(10)(g) A final order, judgment, or decree is entered by a~~

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233 court of competent jurisdiction, on the application of a
234 creditor of the viator, adjudicating the viator bankrupt or
235 insolvent, or approving a petition seeking reorganization of the
236 viator or appointing a receiver, trustee, or liquidator to all
237 or a substantial part of the viator's assets. ~~;~~ ~~or~~

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

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

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

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

255 (c) Neither the insured nor the policy has been evaluated
256 for settlement.

257
258 ~~If the viatical settlement provider submits to the insurer a~~
259 ~~copy of the viator's or owner's certification described above,~~
260 ~~then the provider submits a request to the insurer to effect the~~
261 ~~transfer of the policy or certificate to the viatical settlement~~

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262 ~~provider, the viatical settlement agreement shall not be void or~~
263 ~~unenforceable by operation of this section. The insurer shall~~
264 ~~timely respond to such request. Nothing in this section shall~~
265 ~~prohibit an insurer from exercising its right during the~~
266 ~~contestability period to contest the validity of any policy on~~
267 ~~grounds of fraud.~~

268 Section 6. Section 626.99289, Florida Statutes, is created
269 to read:

270 626.99289 Void and unenforceable contracts, agreements,
271 arrangements, and transactions.—Notwithstanding s. 627.455, a
272 contract, agreement, arrangement, or transaction, including, but
273 not limited to, a financing agreement or any other arrangement
274 or understanding entered into, whether written or verbal, for
275 the furtherance or aid of a stranger-originated life insurance
276 practice is void and unenforceable.

277 Section 7. Section 626.99290, Florida Statutes, is created
278 to read:

279 626.99290 Contestability of life insurance policies.—
280 Notwithstanding s. 627.455, a life insurer may contest a life
281 insurance policy if the policy was obtained by a stranger-
282 originated life insurance practice, as defined in s. 626.9911.

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