

By the Committees on Appropriations; and 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.; providing that a viatical settlement contract is
12 void and unenforceable by either party if the viatical
13 settlement policy is subject, within a specified
14 timeframe, to a loan secured by an interest in the
15 policy; revising conditions and requirements in which
16 viatical settlement contracts entered into within
17 specified timeframes are valid and enforceable;
18 deleting provisions related to the transfer of
19 insurance policies or certificates to viatical
20 settlement providers; creating s. 626.99289, F.S.;
21 providing that certain contracts, agreements,
22 arrangements, or transactions relating to stranger-
23 originated life insurance practices are void and
24 unenforceable; creating s. 626.99291, F.S.;
25 authorizing a life insurer to contest policies
26 obtained through such practices; creating s.
27 626.99292, F.S.; requiring life insurers to provide a
28 specified statement to individual life insurance
29 policyholders; authorizing such statements to

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30 accompany or be included in notices or mailings
31 provided to the policyholders; requiring such
32 statements to include contact information; providing
33 an effective date.

34
35 Be It Enacted by the Legislature of the State of Florida:

36
37 Section 1. Present subsections (2) through (7) of section
38 626.9911, Florida Statutes, are renumbered as subsections (3)
39 through (8), respectively, present subsections (8) through (14)
40 of that section are renumbered as subsections (10) through (16),
41 respectively, and new subsections (2) and (9) are added to that
42 section, to read:

43 626.9911 Definitions.—As used in this act, the term:

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

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

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

55 2. The underwriting of a viatical settlement contract or a
56 life insurance policy;

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

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59 4. Premiums paid on a life insurance policy;

60 5. Payments and changes in ownership or beneficiary made in
61 accordance with the terms of a viatical settlement contract or a
62 life insurance policy;

63 6. The reinstatement or conversion of a life insurance
64 policy;

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

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

69 9. A financing transaction for a viatical settlement
70 contract or life insurance policy.

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

74 (c) Engaging in a stranger-originated life insurance
75 practice.

76 (d) Failing to disclose, upon request by an insurer, that
77 the prospective insured has undergone a life expectancy
78 evaluation by a person other than the insurer or its authorized
79 representatives in connection with the issuance of the life
80 insurance policy.

81 (e) Perpetuating a fraud or preventing the detection of a
82 fraud by:

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

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

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

91 4. Filing with the office or the equivalent chief insurance
92 regulatory official of another jurisdiction a document that
93 contains false information or conceals information about a
94 material fact from the office or other regulatory official.

95 (f) Embezzlement, theft, misappropriation, or conversion of
96 moneys, funds, premiums, credits, or other property of a
97 viatical settlement provider, insurer, insured, viator,
98 insurance policyowner, or other person engaged in the business
99 of viatical settlements or life insurance.

100 (g) Entering into, negotiating, brokering, or otherwise
101 dealing in a viatical settlement contract, the subject of which
102 is a life insurance policy that was obtained based on
103 information that was falsified or concealed for the purpose of
104 defrauding the policy's issuer, viatical settlement provider, or
105 viator.

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

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

112 (j) Facilitating or causing the transfer of the ownership
113 of an insurance policy covering a Florida resident to a trust
114 with a situs outside this state or to another nonresident entity
115 to avoid the provisions of this act.

116 (k) Applying for or obtaining a loan that is secured

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117 directly or indirectly by an interest in a life insurance policy
118 with intent to defraud, for the purpose of depriving another of
119 property or for pecuniary gain.

120 (1) Attempting to commit, assisting, aiding, or abetting in
121 the commission of, or conspiring to commit, an act or omission
122 specified in this subsection.

123 (9) "Stranger-originated life insurance practice" means an
124 act, practice, arrangement, or agreement to initiate a life
125 insurance policy for the benefit of a third-party investor who,
126 at the time of policy origination, has no insurable interest in
127 the insured. Stranger-originated life insurance practices
128 include, but are not limited to:

129 (a) The purchase of a life insurance policy with resources
130 or guarantees from or through a person who, at the time of such
131 policy's inception, could not lawfully initiate the policy and
132 the execution of a verbal or written arrangement or agreement to
133 directly or indirectly transfer the ownership of such policy or
134 policy benefits to a third party.

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

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

141 626.9924 Viatical settlement contracts; procedures;
142 rescission.—

143 (7) At any time during the contestable period, within 20
144 days after a viator executes documents necessary to transfer
145 rights under an insurance policy or within 20 days of any

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146 agreement, option, promise, or any other form of understanding,
147 express or implied, to viaticate the policy, the provider must
148 give notice to the insurer of the policy that the policy has or
149 will become a viaticated policy. The notice must be accompanied
150 by the documents required by s. 626.99287 ~~626.99287(5)(a)~~ in
151 ~~their entirety.~~

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

154 626.99245 Conflict of regulation of viaticals.—

155 (2) This section does not affect the requirement of ss.
156 626.9911(14) ~~626.9911(12)~~ and 626.9912(1) that a viatical
157 settlement provider doing business from this state must obtain a
158 viatical settlement license from the office. As used in this
159 subsection, the term "doing business from this state" includes
160 effectuating viatical settlement contracts from offices in this
161 state, regardless of the state of residence of the viator.

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

164 626.99275 Prohibited practices; penalties.—

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

166 (a) ~~To~~ Knowingly enter into, broker, or otherwise deal in a
167 viatical settlement contract the subject of which is a life
168 insurance policy, knowing that the policy was obtained by
169 presenting materially false information concerning any fact
170 material to the policy or by concealing, for the purpose of
171 misleading another, information concerning any fact material to
172 the policy, where the viator or the viator's agent intended to
173 defraud the policy's issuer.

174 (b) ~~To~~ Knowingly or with the intent to defraud, for the

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175 purpose of depriving another of property or for pecuniary gain,
176 issue or use a pattern of false, misleading, or deceptive life
177 expectancies.

178 (c) ~~Te~~ Knowingly engage in any transaction, practice, or
179 course of business intending thereby to avoid the notice
180 requirements of s. 626.9924(7).

181 (d) ~~Te~~ Knowingly or intentionally facilitate the change of
182 state of residency of a viator to avoid the provisions of this
183 chapter.

184 (e) Knowingly enter into a viatical settlement contract
185 before the application for or issuance of a life insurance
186 policy that is the subject of a viatical settlement contract or
187 during an applicable period specified in s. 626.99287(1) or (2),
188 unless the viator provides a sworn affidavit and accompanying
189 independent evidentiary documentation in accordance with s.
190 626.99287.

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

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

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

198 Section 5. Section 626.99287, Florida Statutes, is amended
199 to read:

200 626.99287 Contestability of viaticated policies.-

201 (1) Except as hereinafter provided, if a viatical
202 settlement contract is entered into within the 2-year period
203 commencing with the date of issuance of the insurance policy or

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204 certificate to be acquired, the viatical settlement contract is
205 void and unenforceable by either party.

206 (2) Except as hereinafter provided, if a viatical
207 settlement policy is subject to a loan secured directly or
208 indirectly by an interest in the policy within a 5-year period
209 commencing on the date of issuance of the policy or certificate,
210 the viatical settlement contract is void and unenforceable by
211 either party.

212 (3) Notwithstanding the limitations in subsections (1) and
213 (2) this limitation, such a viatical settlement contract is not
214 void and unenforceable if the viator provides a sworn affidavit
215 and accompanying independent evidentiary documentation
216 certifying to the viatical settlement provider that one or more
217 of the following conditions were met during the periods
218 applicable to the viaticated policy as stated in subsections (1)
219 or (2):

220 (a) ~~(1)~~ The policy was issued upon the owner's exercise of
221 conversion rights arising out of a group or term policy, if the
222 total time covered under the prior policy is at least 60 months.
223 The time covered under a group policy must be calculated without
224 regard to any change in insurance carriers, provided the
225 coverage has been continuous and under the same group
226 sponsorship.

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

229 ~~(3) The owner of the policy is not a natural person;~~

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

232 (c) ~~(5)~~ The viator certifies by producing independent

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233 evidence to the viatical settlement provider that one or more of
234 the following conditions were ~~have been met within the 2-year~~
235 ~~period:~~

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

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

239 ~~b. Requires a course of treatment for a period of at least~~
240 ~~3 years of long-term care or home health care; and~~

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

243 2.(b) The viator's spouse dies;

244 3.(e) The viator divorces his or her spouse;

245 4.(d) The viator retires from full-time employment;

246 5.(e) The viator becomes physically or mentally disabled
247 and a physician determines that the disability prevents the
248 viator from maintaining full-time employment;

249 6.(f) The owner of the policy was the insured's employer at
250 the time the policy or certificate was issued and the employment
251 relationship terminated;

252 7.(g) A final order, judgment, or decree is entered by a
253 court of competent jurisdiction, on the application of a
254 creditor of the viator, adjudicating the viator bankrupt or
255 insolvent, or approving a petition seeking reorganization of the
256 viator or appointing a receiver, trustee, or liquidator to all
257 or a substantial part of the viator's assets; or

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

261 (d) The viator entered into a viatical settlement contract

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262 more than 2 years after the policy's issuance date and, with
263 respect to the policy, at all times before the date that is 2
264 years after policy issuance, each of the following conditions is
265 met:

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

271 2. There is no agreement or understanding with any other
272 person to guarantee any such liability or to purchase, or stand
273 ready to purchase, the policy, including through an assumption
274 or forgiveness of the loan; and

275 3. Neither the insured or the policy has been evaluated for
276 settlement.

277
278 ~~If the viatical settlement provider submits to the insurer a~~
279 ~~copy of the viator's or owner's certification described above,~~
280 ~~then the provider submits a request to the insurer to effect the~~
281 ~~transfer of the policy or certificate to the viatical settlement~~
282 ~~provider, the viatical settlement agreement shall not be void or~~
283 ~~unenforceable by operation of this section. The insurer shall~~
284 ~~timely respond to such request. Nothing in this section shall~~
285 ~~prohibit an insurer from exercising its right during the~~
286 ~~contestability period to contest the validity of any policy on~~
287 ~~grounds of fraud.~~

288 Section 6. Section 626.99289, Florida Statutes, is created
289 to read:

290 626.99289 Void and unenforceable contracts, agreements,

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291 arrangements, and transactions.—Notwithstanding s. 627.455, a
292 contract, agreement, arrangement, or transaction, including, but
293 not limited to, a financing agreement or any other arrangement
294 or understanding entered into, whether written or verbal, for
295 the furtherance or aid of a stranger-originated life insurance
296 practice is void and unenforceable.

297 Section 7. Section 626.99291, Florida Statutes, is created
298 to read:

299 626.99291 Contestability of life insurance policies.—
300 Notwithstanding s. 627.455, a life insurer may contest a life
301 insurance policy if the policy was obtained by a stranger-
302 originated life insurance practice, as defined in s. 626.9911.

303 Section 8. Section 626.99292, Florida Statutes, is created
304 to read:

305 626.99292 Notice to insureds.—

306 (1) A life insurer shall provide an individual life
307 insurance policyholder with a statement informing him or her
308 that if he or she is considering making changes in the status of
309 his or her policy, he or she should consult with a licensed
310 insurance or financial advisor. The statement may accompany or
311 be included in notices or mailings otherwise provided to the
312 policyholder.

313 (2) The statement must also advise the policyholder that he
314 or she may contact the office for more information and include a
315 website address or other location or manner by which the
316 policyholder may contact the office.

317 Section 9. This act shall take effect upon becoming a law.