

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 specified acts and transactions relating to stranger-
20 originated life insurance practices are void and
21 unenforceable; creating s. 626.99290, F.S.;
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 (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 5-year period commencing on the date of issuance of

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

199 | (1) The policy was issued upon the owner's exercise of
 200 | conversion rights arising out of a group or term policy, if the

201 total time covered under the prior policy is at least 60 months.
 202 The time covered under a group policy shall be calculated without
 203 regard to any change in insurance carriers, provided the coverage
 204 has been continuous and under the same group sponsorship.

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

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

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

210 (4)~~(5)~~ The viator certifies by producing independent
 211 evidence to the viatical settlement provider that one or more of
 212 the following conditions were met during the 5-year period ~~have~~
 213 ~~been met within the 2-year period:~~

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

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

217 b. ~~Requires a course of treatment for a period of at least~~
 218 ~~3 years of long term care or home health care; and~~

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

221 (b) The viator's spouse dies;

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

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

224 (e) The viator becomes physically or mentally disabled and
 225 a physician determines that the disability prevents the viator

226 from maintaining full-time employment;

227 (f) The owner of the policy was the insured's employer at
228 the time the policy or certificate was issued and the employment
229 relationship terminated;

230 (g) A final order, judgment, or decree is entered by a
231 court of competent jurisdiction, on the application of a
232 creditor of the viator, adjudicating the viator bankrupt or
233 insolvent, or approving a petition seeking reorganization of the
234 viator or appointing a receiver, trustee, or liquidator to all
235 or a substantial part of the viator's assets; or

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

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

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

249 (b) There is no agreement or understanding with any other
250 person to guarantee any such liability or to purchase, or stand

251 ready to purchase, the policy, including through an assumption or
252 forgiveness of the loan; and

253 (c) Neither the insured nor the policy has been evaluated
254 for settlement.

255

256 ~~If the viatical settlement provider submits to the insurer a~~
257 ~~copy of the viator's or owner's certification described above,~~
258 ~~then the provider submits a request to the insurer to effect the~~
259 ~~transfer of the policy or certificate to the viatical settlement~~
260 ~~provider, the viatical settlement agreement shall not be void or~~
261 ~~unenforceable by operation of this section. The insurer shall~~
262 ~~timely respond to such request. Nothing in this section shall~~
263 ~~prohibit an insurer from exercising its right during the~~
264 ~~contestability period to contest the validity of any policy on~~
265 ~~grounds of fraud.~~

266 Section 6. Section 626.99289, Florida Statutes, is created
267 to read:

268 626.99289 Void and unenforceable contracts, agreements,
269 arrangements, and transactions.—Notwithstanding s. 627.455, a
270 contract, agreement, arrangement, or transaction, including, but
271 not limited to, a financing agreement or any other arrangement or
272 understanding entered into, whether written or verbal, for the
273 furtherance or aid of a stranger-originated life insurance
274 practice is void and unenforceable.

275 Section 7. Section 626.99290, Florida Statutes, is created

276 to read:

277 626.99290 Contestability of life insurance policies.-
278 Notwithstanding s. 627.455, a life insurer may contest a life
279 insurance policy if the policy was obtained by a stranger-
280 originated life insurance practice, as defined in s. 626.9911.

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