

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 (7) of section  
 29 626.9911, Florida Statutes, are renumbered as subsections (3)  
 30 through (8), respectively, 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 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 (9) "Stranger-originated life insurance practice" means an  
112 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.