

## **BILL ANALYSIS**

S.B. 1323  
By: Armbrister  
Insurance  
Committee Report (Unamended)

### **BACKGROUND AND PURPOSE**

Texas law on viatical settlements has not been updated since 1999 and does not reflect the current marketplace or level of regulation found across the country.

C.S.S.B. 1323 increases consumer protections provided in Chapter 1111, Insurance Code, regarding the sale of viatical and life settlements in Texas by updating licensing requirements for viatical brokers, increasing anti-fraud protection, improving privacy protections, and enhancing the Department of Insurance's ability to regulate minimum levels for viatical settlement values.

### **RULEMAKING AUTHORITY**

Rulemaking authority previously granted to the commissioner of insurance is modified in SECTION 4 (Section 1111.003, Insurance Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 9 (Section 1111.008, Insurance Code) of this bill.

### **ANALYSIS**

SECTION 1. Amends Section 111.001, Insurance Code, to define "advertising," "business of viatical settlements," "chronically ill," "financing entity," "fraudulent viatical settlement act," "life insurance agent," "policy," "related provider trust," "special purpose entity," "terminally ill," "viatical settlement broker," "viatical settlement provider," "viaticated policy," and "viator." Deletes the definitions of "life settlement" and "viatical settlement."

SECTION 2. Amends Section 111.002, Insurance Code, as follows:

Sec. 1111.002. New heading: PURPOSE; CONSTRUCTION WITH CERTAIN OTHER LAW.

(a) Makes modifications to the purpose of this subchapter.

(b) Provides that the department has exclusive jurisdiction in this state to regulate viatical settlements, other than transactions governed by the Securities Act (Article 581-1 et seq., V.T.C.S.) in the regulation of securities.

SECTION 3. Amends Subchapter A, Chapter 1111, Insurance Code, by adding Sections 1111.0021, 1111.0022, and 1111.0023, as follows:

Sec. 1111.0021. VIATICAL SETTLEMENT CONTRACT DEFINED. Defines "viatical settlement contract." Provides that the term includes and excludes certain contracts and agreements.

Sec. 1111.0022. FRAUDULENT INSURANCE ACT. Provides that a fraudulent viatical settlement act is a fraudulent insurance act for the purposes of Chapter 701 (Insurance Fraud Investigation).

Sec. 1111.0023. RELATED PROVIDER TRUST AGREEMENT. Requires a related provider trust to have a written agreement with the registered viatical settlement provider under which the registered viatical settlement provider is responsible for ensuring compliance with all statutory and regulatory requirements and under which the trust agrees to make all records and files related to viatical settlement transactions available to the commissioner of insurance (commissioner) as if those records and files were

maintained directly by the registered viatical settlement provider.

SECTION 4. Amends Section 1111.003, Insurance Code, as follows:

- (a) Authorizes, rather than requires, the commissioner to adopt rules to implement this subchapter. Deletes existing text regarding rule adoption relating to life and viatical settlements.
- (b) Makes modifications to the guidelines for rules adopted by the commissioner under this section.
- (c) Deletes existing text of this subsection. Creates this subsection from text of existing Subsection (d). Deletes existing text referring to a life settlement company.

SECTION 5. Amends Section 1111.004, Insurance Code, as follows:

Sec. 1111.004. New heading: REGISTRATION REQUIREMENTS. (a) Prohibits a person from negotiating a viatical settlement contract between a viator and one or more viatical settlement providers unless the person is a viatical settlement broker.

- (b) Provides that a life insurance agent is deemed to meet the registration requirements of this section and is permitted to operate as a viatical settlement broker if the agent meets certain requirements. Deletes existing text of this section.

SECTION 6. Amends Subchapter A, Chapter 1111, Insurance Code, by adding Section 111.0041, as follows:

Sec. 111.0041. EXEMPTIONS. (a) Provides that certain persons are exempt from Section 1111.004.

- (b) Provides that Section 4001.052 (Solicitor of Application for Insurance Considered Agent of Insurance) does not apply to a life insurance agent representing a viator.

SECTION 7. Amends Section 1111.005, Insurance Code, by amending Subsection (a) and adding Subsection (d), as follows:

- (a) Makes modifications to the list of actions for which the commissioner is authorized to suspend or revoke a registration or deny an application for registration.
- (d) Authorizes the commissioner to suspend, revoke, or refuse to renew the registration of a viatical settlement broker if the commissioner finds that the viatical settlement broker has violated this subchapter.

SECTION 8. Amends Section 1111.006, Insurance Code, to make modifications to the list of certain laws applying to a person engaged in the business of viatical settlements.

SECTION 9. Amends Subchapter A, Chapter 1111, Insurance Code, by adding Sections 1111.007, 1111.008, 1111.009, 1111.010, 1111.011, and 1111.012, as follows:

Sec. 1111.007. FORMS. (a) Prohibits a person from using a viatical settlement contract or providing to a viator a disclosure statement form in this state unless filed with and approved by the commissioner.

- (b) Provides that any viatical settlement contract form or disclosure form filed with the commissioner is considered approved if the form or disclosure is not disapproved by the commissioner on or before the 60th day after the date of the filing.
- (c) Requires the commissioner to disapprove a viatical settlement contract form or disclosure statement form if, in the commissioner's opinion, the contract or provisions contained in the contract are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the viator.
- (d) Requires a viatical settlement contract and an application for a viatical

settlement contract, regardless of the form of transmission, to contain a specific statement or a substantially similar statement pertaining to knowingly presenting false information.

(e) Provides that the lack of a statement required by Subsection (d) does not constitute a defense in any prosecution for a fraudulent viatical settlement act.

Sec. 1111.008. REPORTS. (a) Requires each viatical settlement provider to file with the commissioner by March 1 of each year an annual statement containing information required by the commissioner by rule.

(b) Provides that information is required by this section only with respect to transactions in which the viator is a resident of this state or in which the viatical settlement provider is located in this state. Prohibits the commissioner from requiring certain information.

Sec. 1111.009. DISCLOSURES. (a) Requires a viatical settlement provider or broker to provide the viator with certain disclosures with each application for a viatical settlement, not later than the time the application for the viatical settlement contract is signed by all parties. Requires the disclosures to be provided in a separate document that is signed by the viator and the viatical settlement provider or broker, and to state and include certain information.

(b) Requires a viatical settlement provider to provide the viator with certain disclosures not later than the date the viatical settlement contract is signed by all parties. Requires the disclosures to be conspicuously displayed in the viatical settlement contract or in a separate document signed by the viator and the viatical settlement provider or viatical settlement broker and states certain information.

(c) Requires the provider to communicate a change in ownership or beneficiary to the insured on or before the 20th day after the date of the change if the provider transfers ownership or changes the beneficiary of the insurance policy.

Sec. 1111.010. PROHIBITED ACTS. (a) Prohibits a person from committing a fraudulent viatical settlement act.

(b) Prohibits a person from knowingly or intentionally interfering with the enforcement of this subchapter or investigations of suspected or actual violations of this subchapter.

(c) Prohibits a person in the business of viatical settlements from knowingly or intentionally permitting a person convicted of a felony involving dishonesty or breach of trust to participate in the business of viatical settlements.

(d) Provides that it is a violation of this subchapter for any person to enter into a viatical settlement contract within a two-year period commencing with the date of issuance of the insurance policy or certificate unless the viator certifies to the viatical settlement provider that certain conditions have been met within the two-year period.

(e) Requires copies of the certifications and independent evidence required by Subsection (d) to be submitted to the insurer at the time the viatical settlement provider submits a request to the insurer for verification of coverage. Requires the copies to be accompanied by a letter of attestation from the viatical settlement provider that the copies are true and correct copies of the documents received by the viatical settlement provider.

Sec. 1111.011. TRADE PRACTICES. (a) Requires a viatical settlement provider to pay an amount greater than the cash surrender value or accelerated death benefit then available if the policyholder qualifies for an accelerated death benefit.

(b) Provides that regardless of the source of compensation, a viatical settlement broker is considered to represent only the viator and owes a fiduciary duty to the viator to act according to the viator's instructions and in the viator's best interests.

(c) Provides that a violation of this subchapter is considered an unfair method of competition or an unfair or deceptive act or practice in the business of insurance

under Chapter 541 (Unfair Methods of Competition and Unfair or Deceptive Acts or Practices).

Sec. 1111.012. TEXAS DEPARTMENT OF INSURANCE INVESTIGATION OF VIATICAL SETTLEMENT FRAUD. Requires any information or material acquired by the department that is relevant to suspected viatical settlement fraud to be treated in the same manner as information or material acquired by the department that is relevant to an inquiry by the insurance fraud unit under Chapter 701 (Insurance Fraud Investigations) and the confidentiality, privilege, and public records provisions of that chapter are required to apply to this information or material.

(b) Provides that the immunity provisions of Chapter 701 apply to a person filing reports or furnishing other information concerning suspected, anticipated, or completed viatical settlement fraud.

SECTION 10. Amends the heading of Chapter 1111, Insurance Code, to read as follows:  
CHAPTER 1111. VIATICAL SETTLEMENTS AND ACCELERATED TERM LIFE INSURANCE BENEFITS

SECTION 11. Amends the heading of Subchapter A, Chapter 1111, Insurance Code, to read as follows:

SUBCHAPTER A. VIATICAL SETTLEMENTS

SECTION 12. Requires the commissioner to adopt all rules necessary to implement Chapter 1111, Insurance Code, as amended by this Act, to take effect not later than March 1, 2006.

SECTION 13. Effective date: September 1, 2005.

**EFFECTIVE DATE**

This Act takes effect September 1, 2005.