

BILL ANALYSIS

Senate Research Center
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S.B. 1323
By: Armbrister
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AUTHOR'S/SPONSOR'S STATEMENT OF INTENT

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.

As proposed, 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 3 (Section 1111.003, Insurance Code) of this bill.

Rulemaking authority is expressly granted to the commissioner of insurance in SECTION 7 (Sections 1111.008 and 1111.009, Insurance Code) of this bill.

SECTION BY SECTION 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," "recklessly," "related provider trust," "special purpose entity," "terminally ill," "viatical settlement provider," "viaticated policy," and "viator." Deletes the definitions of "life settlement" and "viatical settlement."

SECTION 2. 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 3. Amends Section 1111.003, Insurance Code, by amending Subsections (a), (b), and (c) as follows:

(a) 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 requirements for rules adopted by the commissioner under this section.

(c) Authorizes standards adopted by the commissioner for evaluating the reasonableness of payment under a viatical settlement contract for a person who is terminally or chronically ill to include the regulation of discount rates used to determine the amount paid in exchange for assignment, transfer, sale, devise, or bequest of a benefit under a policy. Deletes existing text pertaining to pricing rules.

SECTION 4. Amends Section 1111.004, Insurance Code, as follows:

Sec. 1111.004. New heading: LICENSING AND 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 life insurance agent.

(b) Provides that a life insurance agent is considered to meet the licensing requirements of a viatical settlement broker and may operate as a viatical settlement broker under this subchapter if the agent meets requirements. Deletes text of existing Section 1111.004 (Annual Fee for Registration).

SECTION 5. 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 6. 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 life insurance agent if the commissioner finds that the life insurance agent has violated this subchapter.

SECTION 7. Amends Section 1111.006, Insurance Code, to make modifications to the list of certain laws applying to a person engaged in the business of life or viatical settlements. Requires, if there is more than one owner of a single policy and the owners are residents of different states, the viatical settlement transaction to be governed by the law of the state in which the owner having the largest percentage ownership resides or, if the owners hold equal ownership, the state of residence of one owner agreed upon in writing by all owners.

SECTION 8. Amends Subchapter A, Chapter 1111, Insurance Code, by adding Sections 1111.007, 1111.008, 1111.009, 1111.010, and 1111.011, 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. Prohibits the commissioner from requiring certain information.

Sec. 1111.009. DISCLOSURES. Requires an insurance company to send written notice as required by this section to the owner of each policy issued by the company under which the insured is 60 years of age or older or is known to be terminally ill or chronically ill that a viatical settlement contract is an available alternative transaction to the owner. Requires that the notice be sent at the time the insurance company receives or sends certain information or at any other time the commissioner requires by rule.

Sec. 111.010. 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) Requires reporting of suspected fraudulent viatical settlement acts to the department to be treated in the same manner as reporting of fraudulent insurance acts under Chapter 701 (Insurance Fraud Investigations) and provides that both the confidentiality and immunity provisions of that chapter shall apply to that reporting.

Sec. 1111.011. TRADE PRACTICES. (a) Requires a viatical settlement provider, in a transaction in which the insured is not terminally or chronically ill, to pay an amount greater than the cash surrender value or accelerated death benefit then available.

(b) Provides that regardless of the source of compensation, a life insurance agent 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) Prohibits a person registered under this subchapter or a person licensed or authorized to engage in business under this code from engaging in certain activities.

(d) 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).

SECTION 9. Repealer: Section 1111.003(d) (prohibiting the commissioner from adopting a rule that regulates the actions of an investor providing money to a life or viatical settlement company), Insurance Code.

SECTION 10. (a) Provides that a person who, immediately before February 1, 2005, is a life settlement or viatical broker registered with the Texas Department of Insurance is not required to obtain the appropriate license as required by Chapter 1111, Insurance Code, before September 1, 2006, to continue to comply with Chapter 1111, Insurance Code.

(b) Authorizes a person covered by Subsection (a) of this section to count the time the person was registered by the Texas Department of Insurance as a life settlement or viatical broker towards the one-year licensure period required by Section 1111.004(b)(1), Insurance Code, as amended by this Act.

SECTION 11. 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 12. Effective date: September 1, 2005.