

By: Armbrister

S.B. No. 1323

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of viatical settlement agreements and life settlement agreements; providing penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 1111.001, Insurance Code, is amended to read as follows:

Sec. 1111.001. DEFINITIONS. In this subchapter:

(1) "Advertising" means any written, electronic, or printed communication, or any communication by means of recorded telephone messages or transmitted on radio, television, the Internet, or similar communications media, including filmstrips, motion pictures, and videos, that is published, disseminated, circulated, or placed directly before the public in this state for the purpose of creating an interest in or inducing a person to sell, assign, devise, bequest, or transfer the death benefit or ownership of a policy pursuant to a viatical settlement contract [~~"Life settlement" means an agreement that is solicited, negotiated, offered, entered into, delivered, or issued for delivery in this state under which a person pays anything of value that is:~~

~~[(A) less than the expected death benefit of a policy insuring the life of an individual who does not have a catastrophic or life-threatening illness or condition; and~~

~~[(B) paid in return for the policy owner's or certificate holder's assignment, transfer, bequest, devise, or~~

1 ~~sale of the death benefit under or ownership of the policy]~~.

2 (2) "Business of viatical settlements" means an  
3 activity involved in, but not limited to, the offering,  
4 solicitation, negotiation, procurement, effectuation, purchasing,  
5 investing, financing, monitoring, tracking, underwriting, selling,  
6 transferring, assigning, pledging, or hypothecating of viatical  
7 settlement contracts.

8 (3) "Chronically ill" means:

9 (A) being unable to perform at least two  
10 activities of daily living including eating, toileting,  
11 transferring, bathing, dressing, or continence;

12 (B) requiring substantial supervision to protect  
13 the individual from threats to health and safety due to severe  
14 cognitive impairment; or

15 (C) having a level of disability similar to that  
16 described in Paragraph (A) as determined by the secretary of the  
17 United States Department of Health and Human Services.

18 (4) "Financing entity" means an underwriter,  
19 placement agent, lender, purchaser of securities, purchaser of a  
20 policy or certificate from a viatical settlement provider, credit  
21 enhancer, or person that has a direct ownership in a policy that is  
22 the subject of a viatical settlement contract, but whose principal  
23 activity related to the transaction is providing funds to effect  
24 the viatical settlement or purchase of one or more viaticated  
25 policies and who has an agreement in writing with one or more  
26 registered viatical settlement providers to finance the  
27 acquisition of viatical settlement contracts or to provide

1 stop-loss insurance. The term does not include a nonaccredited  
2 investor.

3 (5) "Fraudulent viatical settlement act" means:

4 (A) an act or omission that is:

5 (i) a violation of a penal law and that is  
6 committed or attempted to be committed while engaging in the  
7 business of viatical settlements or as part of or in support of a  
8 viatical settlement; or

9 (ii) part of an attempt to defraud a  
10 viatical settlement provider, financing entity, agent, viator, or  
11 other person in the business of viatical settlements;

12 (B) knowingly or intentionally engaging in any  
13 act or omission involving the presentation of false information or  
14 the concealment of material information, in order to induce any  
15 life insurance company, viatical settlement broker, or viatical  
16 settlement provider to issue, present, broker, purchase, or  
17 transfer a policy in a viatical settlement; or

18 (C) an attempt to commit or to assist, aid, or  
19 abet the commission of, or the conspiracy to commit the acts or  
20 omissions described by this subdivision.

21 (6) "Life insurance agent" means a person who holds a  
22 general life, accident, and health license under Section 4054.051.

23 (7) "Person" means an individual, corporation, trust,  
24 partnership, association, or any other legal entity.

25 (8) "Policy" means an individual or group life  
26 insurance policy or a group certificate, contract, or arrangement  
27 of life insurance affecting the rights of a resident of this state

1 or bearing a reasonable relation to this state, regardless of  
2 whether delivered or issued for delivery in this state.

3 (9) "Related provider trust" means a titling trust or  
4 other trust established by a registered viatical settlement  
5 provider or a financing entity for the sole purpose of holding the  
6 ownership or beneficial interest in viaticated policies in  
7 connection with a financing transaction and that complies with  
8 Section 1111.0023.

9 (10) "Special purpose entity" means a corporation,  
10 partnership, trust, limited liability company, or other similar  
11 entity formed only to directly or indirectly provide access to  
12 institutional capital markets for a financing entity or registered  
13 viatical settlement provider.

14 (11) "Terminally ill" means having an illness or  
15 sickness as certified by a physician that reasonably is expected to  
16 result in death in 24 months or less.

17 (12) "Viatical settlement broker" means a person who,  
18 on behalf of a viator and for a fee, commission, or other valuable  
19 consideration, offers or attempts to negotiate viatical settlement  
20 contracts between a viator and one or more viatical settlement  
21 providers. A viatical settlement broker is deemed to represent  
22 only the viator, and not the insurer or the viatical settlement  
23 provider, and owes a duty to the viator to act according to the  
24 viator's instructions. The insurer that issued the policy being  
25 viaticated is not responsible for any act or omission of the  
26 viatical settlement broker or viatical settlement provider arising  
27 out of or in connection with a viatical settlement transaction,

1 unless the insurer receives compensation from the viatical  
2 settlement provider or viatical settlement broker for the viatical  
3 settlement contract.

4 (13) "Viatical settlement provider" means a person,  
5 other than a viator, who enters into or effectuates a viatical  
6 settlement contract. The term does not include:

7 (A) a bank, savings bank, savings and loan  
8 association, credit union, or other licensed lending institution  
9 that takes an assignment of a policy as collateral for a loan;

10 (B) the issuer of a policy providing accelerated  
11 benefits pursuant to the policy;

12 (C) an authorized or eligible insurer that  
13 provides stop-loss coverage to a viatical settlement provider,  
14 financing entity, special purpose entity, or related provider  
15 trust;

16 (D) an individual who enters into or effectuates  
17 not more than one agreement in a calendar year for the transfer of  
18 policies for any value less than the expected death benefit;

19 (E) a financing entity;

20 (F) a special purpose entity;

21 (G) a related provider trust; or

22 (H) an accredited investor or qualified  
23 institutional buyer as defined by Regulation D, Rule 501, or Rule  
24 144A adopted under the federal Securities Act of 1933 who purchases  
25 a viaticated policy from a viatical settlement provider.

26 (14) "Viaticated policy" means a policy that has been  
27 acquired by a viatical settlement provider under a viatical

1 settlement contract.

2 (15) "Viator" means an owner of a policy who is a  
3 resident of this state and who enters or seeks to enter into a  
4 viatical settlement contract. Except as otherwise provided by this  
5 subchapter, a viator is not limited to an owner of a policy insuring  
6 the life of an individual with a terminal or chronic illness or  
7 condition. The term does not include:

8 (A) a registrant under this subchapter,  
9 including a life insurance agent;

10 (B) an accredited investor or qualified  
11 institutional buyer as defined by Regulation D, Rule 501, or Rule  
12 144A adopted under the federal Securities Act of 1933;

13 (C) a financing entity;

14 (D) a special purpose entity; or

15 (E) a related provider trust

16 ~~[(3) "Viatical settlement" means an agreement that is~~  
17 ~~solicited, negotiated, offered, entered into, delivered, or issued~~  
18 ~~for delivery in this state under which a person pays anything of~~  
19 ~~value that is:~~

20 ~~[(A) less than the expected death benefit of a~~  
21 ~~policy insuring the life of an individual who has a catastrophic or~~  
22 ~~life-threatening illness or condition; and~~

23 ~~[(B) paid in return for the policy owner's or~~  
24 ~~certificate holder's assignment, transfer, bequest, devise, or~~  
25 ~~sale of the death benefit under or ownership of the policy].~~

26 SECTION 2. Section 1111.002, Insurance Code, is amended to  
27 read as follows:

1           Sec. 1111.002. PURPOSE. The purpose of this subchapter is  
2 to:

3           (1) provide for registration of persons engaged in the  
4 business of life or viatical settlements; ~~and~~

5           (2) provide consumer protection for a person who may  
6 sell or otherwise transfer the person's life insurance policy; and

7           (3) provide that the department has exclusive  
8 jurisdiction in this state to regulate viatical settlements, other  
9 than transactions governed by The Securities Act (Article 581-1 et  
10 seq., Vernon's Texas Civil Statutes).

11           SECTION 3. Subchapter A, Chapter 1111, Insurance Code, is  
12 amended by adding Sections 1111.0021, 1111.0022, and 1111.0023 to  
13 read as follows:

14           Sec. 1111.0021. VIATICAL SETTLEMENT CONTRACT DEFINED.

15           (a) "Viatical settlement contract" means a written agreement  
16 establishing the terms under which compensation or anything of  
17 value is paid that is less than the expected death benefit of the  
18 policy in return for the viator's assignment, transfer, sale,  
19 devise, or bequest of the death benefit or ownership of any portion  
20 of the policy.

21           (b) The term includes:

22           (1) a contract for a loan or other financing  
23 transaction with a viator secured primarily by:

24           (A) an individual or group life insurance policy,  
25 other than a loan by a life insurance company under the terms of the  
26 policy; or

27           (B) a loan secured by the cash value of a policy;

1 and

2 (2) an agreement with a viator to transfer ownership  
3 or change the beneficiary designation at a later date, regardless  
4 of the date that compensation is paid to the viator.

5 (c) The term does not include a written agreement entered  
6 into between a viator and a person having an insurable interest in  
7 the insured's life.

8 Sec. 1111.0022. FRAUDULENT INSURANCE ACT. A fraudulent  
9 viatical settlement act is a fraudulent insurance act for the  
10 purposes of Chapter 701.

11 Sec. 1111.0023. RELATED PROVIDER TRUST AGREEMENT. A  
12 related provider trust must have a written agreement with the  
13 registered viatical settlement provider under which the registered  
14 viatical settlement provider is responsible for ensuring  
15 compliance with all statutory and regulatory requirements and under  
16 which the trust agrees to make all records and files related to  
17 viatical settlement transactions available to the commissioner as  
18 if those records and files were maintained directly by the  
19 registered viatical settlement provider.

20 SECTION 4. Section 1111.003, Insurance Code, is amended to  
21 read as follows:

22 Sec. 1111.003. RULES; REGISTRATION AND REGULATION.  
23 (a) The [~~To implement this subchapter, the~~] commissioner may  
24 [~~shall~~] adopt [~~reasonable~~] rules to implement this subchapter  
25 [~~relating to life settlements and relating to viatical~~  
26 ~~settlements~~].

27 (b) The rules adopted by the commissioner under this section



1 may ~~[must]~~ include ~~[rules governing]~~:

2 (1) registration procedures, fees, and standards for  
3 ~~[of]~~ a person engaged in the business of viatical ~~[life]~~  
4 settlements;

5 (2) fees for a life insurance agent ~~[registration of a~~  
6 ~~person]~~ engaged in the business of viatical settlements;

7 (3) requirements for a bond or another mechanism for  
8 financial accountability for a viatical settlement provider  
9 ~~[approval of contract forms]~~;

10 (4) standards for evaluating the reasonableness of  
11 payments under a viatical settlement contract for a person who is  
12 terminally or chronically ill ~~[disclosure requirements]~~; and

13 (5) standards for the relationship and  
14 responsibilities of an insurer and a viatical settlement provider,  
15 viatical settlement broker, and others in the business of viatical  
16 settlements during the period of consideration of effectuation of a  
17 viatical settlement contract ~~[prohibited practices relating to:~~

18 ~~[(A) unfair discrimination in the provision of~~  
19 ~~life or viatical settlements, and~~

20 ~~[(B) referral fees paid by persons engaged in the~~  
21 ~~business of life or viatical settlements,~~

22 ~~[(6) assignment or resale of life insurance policies,~~

23 ~~[(7) maintenance of appropriate confidentiality of~~  
24 ~~personal and medical information, and~~

25 ~~[(8) the responsibility of a registrant to ensure~~  
26 ~~compliance with this subchapter and rules relating to life or~~  
27 ~~viatical settlements after the registration is revoked, suspended,~~

1 ~~or otherwise lapses].~~

2 (c) ~~[The commissioner may not adopt a rule establishing a~~  
3 ~~price or fee for the sale or purchase of a life settlement. This~~  
4 ~~subsection does not prohibit the commissioner from adopting a rule~~  
5 ~~relating to an unjust price or fee for the sale or purchase of a life~~  
6 ~~settlement.~~

7 ~~[(d)]~~ The commissioner may not adopt a rule that regulates  
8 the actions of an investor providing money to a ~~[life or]~~ viatical  
9 settlement company.

10 SECTION 5. Section 1111.004, Insurance Code, is amended to  
11 read as follows:

12 Sec. 1111.004. REGISTRATION REQUIREMENTS. (a) A person  
13 may not negotiate a viatical settlement contract between a viator  
14 and one or more viatical settlement providers unless the person is a  
15 viatical settlement broker.

16 (b) A life insurance agent is deemed to meet the  
17 registration requirements of this section and is permitted to  
18 operate as a viatical settlement broker if the agent:

19 (1) is licensed as a general life, accident, and  
20 health insurance agent for at least one year;

21 (2) has not been convicted of a felony involving  
22 dishonesty or breach of trust; and

23 (3) not later than the 30th day after the first day the  
24 agent operates as a viatical settlement broker:

25 (A) completes a form adopted by the department  
26 that includes an acknowledgment by the agent that the agent will  
27 operate as a viatical settlement broker in accordance with this

1 subchapter; and

2 (B) pays a fee set by the commissioner [~~ANNUAL~~  
3 ~~FEE FOR REGISTRATION. The commissioner may adopt rules requiring~~  
4 ~~payment of an annual fee in connection with registration. The fee~~  
5 ~~may not exceed \$250~~].

6 SECTION 6. Subchapter A, Chapter 1111, Insurance Code, is  
7 amended by adding Section 1111.0041 to read as follows:

8 Sec. 1111.0041. EXEMPTIONS. (a) A person who is retained  
9 to represent the viator and whose compensation is not paid directly  
10 or indirectly by the viatical settlement is exempt from Section  
11 1111.004 if the person is:

12 (1) registered or licensed as an attorney; or

13 (2) a certified public accountant or financial planner  
14 accredited by a nationally recognized accreditation agency.

15 (b) Section 4001.052 does not apply to a life insurance  
16 agent representing a viator.

17 SECTION 7. Section 1111.005, Insurance Code, is amended by  
18 amending Subsection (a) and adding Subsection (d) to read as  
19 follows:

20 (a) The commissioner may suspend or revoke a registration or  
21 deny an application for registration if the commissioner determines  
22 that:

23 (1) the registrant or applicant, individually or  
24 through any officer, director, or shareholder of the registrant or  
25 applicant:

26 (A) [~~(1)~~] wilfully violated:

27 (i) [~~(A)~~] this subchapter;

1                    (ii) [~~(B)~~] an applicable provision of this  
2 code or another insurance law of this state; or

3                    (iii) [~~(C)~~] a rule adopted under a law  
4 described by Subparagraph (i) [~~Paragraph (A)~~] or (ii) [~~(B)~~];

5                    (B) [~~(2)~~] intentionally made a material  
6 misstatement in the application for registration;

7                    (C) [~~(3)~~] obtained or attempted to obtain  
8 registration by fraud or misrepresentation;

9                    (D) [~~(4)~~] misappropriated, converted to the  
10 registrant's or applicant's own use, or illegally withheld money  
11 belonging to a party to a life or viatical settlement;

12                    (E) [~~(5)~~] was guilty of fraudulent or dishonest  
13 practices;

14                    (F) [~~(6)~~] materially misrepresented the terms of  
15 business conducted under this subchapter or any other provision of  
16 this code or another insurance law of this state; or

17                    (G) [~~(7)~~] made or issued, or caused to be made or  
18 issued, a statement materially misrepresenting or making  
19 incomplete comparisons regarding the material terms of any business  
20 conducted under this subchapter; or

21                    (2) the registrant or applicant or any officer,  
22 partner, member, or member of key management personnel has been  
23 found guilty of, or has pleaded guilty or nolo contendere to, any  
24 [~~(8) was convicted of a~~] felony or [~~was convicted of a~~  
25 misdemeanor involving moral turpitude or fraud, regardless of  
26 whether a judgment or conviction was entered by the court.

27                    (d) The commissioner may suspend, revoke, or refuse to renew

1 the registration of a viatical settlement broker if the  
2 commissioner finds that the viatical settlement broker has violated  
3 this subchapter.

4 SECTION 8. Section 1111.006, Insurance Code, is amended to  
5 read as follows:

6 Sec. 1111.006. APPLICABILITY OF OTHER INSURANCE LAWS. The  
7 following laws apply to a person engaged in the business of [~~life~~  
8 ~~or~~] viatical settlements:

- 9 (1) Articles 1.10 and [~~1.10D,~~] 1.19 [~~and 21.21~~];  
10 (2) Chapters 82, 83, [~~and~~] 84, 541, and 701;  
11 (3) Sections 31.002, 32.001, 32.002, 32.003, 32.021,  
12 32.023, 32.041, 38.001, 81.004, 543.001, 801.056, and 862.052; and  
13 (4) Subchapter C, Chapter 36.

14 SECTION 9. Subchapter A, Chapter 1111, Insurance Code, is  
15 amended by adding Sections 1111.007 through 1111.012 to read as  
16 follows:

17 Sec. 1111.007. FORMS. (a) A person may not use a viatical  
18 settlement contract or provide to a viator a disclosure statement  
19 form in this state unless filed with and approved by the  
20 commissioner.

21 (b) Any viatical settlement contract form or viator  
22 disclosure form filed with the commissioner is considered approved  
23 if the form or disclosure is not disapproved by the commissioner on  
24 or before the 60th day after the date of the filing.

25 (c) The commissioner shall disapprove a viatical settlement  
26 contract form or viator disclosure statement form if, in the  
27 commissioner's opinion, the contract or provisions contained in the

1 contract are unreasonable, contrary to the interests of the public,  
2 or otherwise misleading or unfair to the viator.

3 (d) A viatical settlement contract and an application for a  
4 viatical settlement contract, regardless of the form of  
5 transmission, must contain the following statement or a  
6 substantially similar statement:

7 "Any person who knowingly presents false information in an  
8 application for insurance or a viatical settlement contract is  
9 guilty of a crime and, on conviction, may be subject to fines or  
10 confinement in prison, or both."

11 (e) The lack of a statement required by Subsection (d) does  
12 not constitute a defense in any prosecution for a fraudulent  
13 viatical settlement act.

14 Sec. 1111.008. REPORTS. (a) Each viatical settlement  
15 provider shall file with the commissioner by March 1 of each year an  
16 annual statement containing information required by the  
17 commissioner by rule.

18 (b) Information is required by this section only with  
19 respect to transactions in which the viator is a resident of this  
20 state or in which the viatical settlement provider is located in  
21 this state. The commissioner may not require:

22 (1) individual transaction data regarding the  
23 business of viatical settlements; or

24 (2) data that compromises the privacy of personal,  
25 financial, and health information of the viator or insured.

26 Sec. 1111.009. DISCLOSURES. (a) With each application for  
27 a viatical settlement, a viatical settlement provider or viatical

1 settlement broker shall provide the viator with at least the  
2 following disclosures not later than the time the application for  
3 the viatical settlement contract is signed by all parties. The  
4 disclosures shall be provided in a separate document that is signed  
5 by the viator and the viatical settlement provider or viatical  
6 settlement broker and must:

7 (1) state that:

8 (A) there are possible alternatives to viatical  
9 settlement contracts, including any accelerated death benefits or  
10 policy loans offered under the viator's life insurance policy;

11 (B) some or all of the proceeds of the viatical  
12 settlement may be taxable under federal income tax law or state  
13 franchise or income tax law and assistance should be sought from a  
14 professional tax advisor;

15 (C) proceeds of the viatical settlement could be  
16 subject to the claims of creditors;

17 (D) receipt of the proceeds of a viatical  
18 settlement may adversely affect the viator's eligibility for  
19 Medicaid or other government benefits or entitlements and advice  
20 should be obtained from the appropriate government agencies;

21 (E) the viator has the right to rescind a  
22 viatical settlement contract for 15 calendar days after the receipt  
23 of the viatical settlement proceeds by the viator, and if the  
24 insured dies during the rescission period, the settlement contract  
25 is deemed to have been rescinded, subject to repayment of all  
26 viatical settlement proceeds and any premiums, loans, and loan  
27 interest to the viatical settlement provider or purchaser;

1           (F) funds will be sent to the viator on or before  
2 the third business day after the date the viatical settlement  
3 provider receives the insurer's or group administrator's  
4 acknowledgment that ownership of the policy or interest in the  
5 certificate has been transferred and the beneficiary has been  
6 designated; and

7           (G) entering into a viatical settlement contract  
8 may cause other rights or benefits, including conversion rights and  
9 waiver of premium benefits that may exist under the policy or  
10 certificate, to be forfeited by the viator and assistance should be  
11 sought from a financial advisor;

12           (2) include a brochure describing the process of  
13 viatical settlements based on:

14                   (A) a form developed by the commissioner; or

15                   (B) if the commissioner does not develop a form,  
16 the National Association of Insurance Commissioner's form;

17           (3) contain the following language: "All medical,  
18 financial, or personal information solicited or obtained by a  
19 viatical settlement provider or viatical settlement broker about an  
20 insured, including the insured's identity or the identity of family  
21 members, a spouse, or significant other may be disclosed as  
22 necessary to effect the viatical settlement between the viator and  
23 the viatical settlement provider. If you are asked to provide this  
24 information, you will be asked to consent to the disclosure. The  
25 information may be provided to someone who buys the policy or  
26 provides funds for the purchase. You may be asked to renew your  
27 permission to share information every two years."; and



1           (4) state that:

2           (A) the insured may be contacted by either the  
3 viatical settlement provider or broker or the provider's or  
4 broker's authorized representative for the purpose of determining  
5 the insured's health status; and

6           (B) this contact is limited to once every three  
7 months if the insured has a life expectancy of more than one year,  
8 and not more than once per month if the insured has a life  
9 expectancy of one year or less.

10          (b) A viatical settlement provider shall provide the viator  
11 with at least the following disclosures not later than the date the  
12 viatical settlement contract is signed by all parties. The  
13 disclosures shall be conspicuously displayed in the viatical  
14 settlement contract or in a separate document signed by the viator  
15 and the viatical settlement provider or viatical settlement broker  
16 and state:

17           (1) the affiliation, if any, between the viatical  
18 settlement provider and the issuer of the insurance policy to be  
19 viaticated;

20           (2) the name, address, and telephone number of the  
21 viatical settlement provider;

22           (3) that if an insurance policy to be viaticated has  
23 been issued as a joint policy or involves family riders or any  
24 coverage of a life other than the insured under the policy to be  
25 viaticated, the viator shall be informed of the possible loss of  
26 coverage on the other lives under the policy and shall be advised to  
27 consult with the viator's insurance producer or the insurer issuing

1 the policy for advice on the proposed viatical settlement;

2 (4) the dollar amount of the current death benefit  
3 payable to the viatical settlement provider under the policy or  
4 certificate, and if known, the availability of any additional  
5 guaranteed insurance benefits, the dollar amount of any accidental  
6 death and dismemberment benefits under the policy or certificate,  
7 and the viatical settlement provider's interest in those benefits;  
8 and

9 (5) the name, business address, and telephone number  
10 of the independent third-party escrow agent and that the viator or  
11 owner may inspect or receive copies of the relevant escrow or trust  
12 agreements or documents.

13 (c) If the provider transfers ownership or changes the  
14 beneficiary of the insurance policy, the provider shall communicate  
15 the change in ownership or beneficiary to the insured on or before  
16 the 20th day after the date of the change.

17 Sec. 1111.010. PROHIBITED ACTS. (a) A person may not  
18 commit a fraudulent viatical settlement act.

19 (b) A person may not knowingly or intentionally interfere  
20 with the enforcement of this subchapter or investigations of  
21 suspected or actual violations of this subchapter.

22 (c) A person in the business of viatical settlements may not  
23 knowingly or intentionally permit a person convicted of a felony  
24 involving dishonesty or breach of trust to participate in the  
25 business of viatical settlements.

26 (d) It is a violation of this subchapter for any person to  
27 enter into a viatical settlement contract within a two-year period

1 commencing with the date of issuance of the insurance policy or  
2 certificate unless the viator certifies to the viatical settlement  
3 provider that one or more of the following conditions have been met  
4 within the two-year period:

5 (1) the policy was issued upon the viator's exercise of  
6 conversion rights arising out of a group or individual policy,  
7 provided the total of the time covered under the conversion policy  
8 plus the time covered under the prior policy is at least 24 months;  
9 or

10 (2) the time covered under a group policy shall be  
11 calculated without regard to any change in insurance carriers,  
12 provided the coverage has been continuous and under the same group  
13 sponsorship and the viator submits independent evidence to the  
14 viatical settlement provider that one or more of the following  
15 conditions have been met within the two-year period:

16 (A) the insured is terminally or chronically ill;

17 or

18 (B) the viator or insured disposes of the  
19 viator's or insured's ownership interests in a closely held  
20 corporation pursuant to terms of a buyout or other similar  
21 agreement in effect at the time the insurance policy was originally  
22 issued.

23 (e) Copies of the certifications and independent evidence  
24 required by Subsection (d) must be submitted to the insurer at the  
25 time the viatical settlement provider submits a request to the  
26 insurer for verification of coverage. The copies must be  
27 accompanied by a letter of attestation from the viatical settlement

1 provider that the copies are true and correct copies of the  
2 documents received by the viatical settlement provider.

3 Sec. 1111.011. TRADE PRACTICES. (a) A viatical settlement  
4 provider must pay an amount greater than:

5 (1) the cash surrender value; or

6 (2) the accelerated death benefit if the policyholder  
7 qualifies for an accelerated death benefit.

8 (b) Regardless of the source of compensation, a viatical  
9 settlement broker is considered to represent only the viator and  
10 owes a fiduciary duty to the viator to act according to the viator's  
11 instructions and in the viator's best interests.

12 (c) A violation of this subchapter is considered an unfair  
13 method of competition or an unfair or deceptive act or practice in  
14 the business of insurance under Chapter 541.

15 Sec. 1111.012. TEXAS DEPARTMENT OF INSURANCE INVESTIGATION  
16 OF VIATICAL SETTLEMENT FRAUD. (a) Any information or material  
17 acquired by the department that is relevant to suspected viatical  
18 settlement fraud shall be treated in the same manner as information  
19 or material acquired by the department that is relevant to an  
20 inquiry by the insurance fraud unit under Chapter 701 and the  
21 confidentiality, privilege, and public records provisions of that  
22 chapter shall apply to this information or material.

23 (b) The immunity provisions of Chapter 701 apply to a person  
24 filing reports or furnishing, orally or in writing, other  
25 information concerning suspected, anticipated, or completed  
26 viatical settlement fraud.

27 SECTION 10. The heading of Chapter 1111, Insurance Code, is

1 amended to read as follows:

2 CHAPTER 1111. [~~LIFE AND~~] VIATICAL SETTLEMENTS AND

3 ACCELERATED TERM LIFE INSURANCE BENEFITS

4 SECTION 11. The heading of Subchapter A, Chapter 1111,  
5 Insurance Code, is amended to read as follows:

6 SUBCHAPTER A. [~~LIFE AND~~] VIATICAL SETTLEMENTS

7 SECTION 12. The commissioner of insurance shall adopt all  
8 rules necessary to implement Chapter 1111, Insurance Code, as  
9 amended by this Act, to take effect not later than March 1, 2006.

10 SECTION 13. This Act takes effect September 1, 2005.