

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 film strips, 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 an entity that has a direct ownership in a policy that
22 is the subject of a viatical settlement contract, but whose
23 principal activity related to the transaction is providing funds to
24 effect the viatical or life settlement or purchase of one or more
25 viaticated policies and who has an agreement in writing with one or
26 more 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) recklessly entering into, negotiating, or
13 otherwise dealing in a viatical settlement contract, the subject of
14 which is a policy that was obtained by presenting false information
15 concerning a fact that is material to the policy, or by concealing,
16 for the purpose of misleading another, information concerning a
17 fact that is material to the policy, where the viator or the
18 viator's agent intended to defraud the insurance company that
19 issued the policy; or

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

23 (6) "Life insurance agent" means a person who holds a
24 license under Section 4054.051.

25 (7) [~~2~~] "Person" means an individual, corporation,
26 trust, partnership, association, or any other legal entity.

27 (8) "Policy" means an individual or group life

1 insurance policy or a group certificate, contract, or arrangement
2 of life insurance affecting the rights of a resident of this state
3 or bearing a reasonable relation to this state, regardless of
4 whether delivered or issued for delivery in this state.

5 (9) "Recklessly" means engaging in conduct in
6 conscious and clearly unjustifiable disregard of a substantial
7 likelihood of the existence of the relevant facts or risks
8 involving a gross deviation from acceptable standards of conduct.

9 (10) "Related provider trust" means a titling trust or
10 other trust established by a registered viatical settlement
11 provider or a financing entity for the sole purpose of holding the
12 ownership or beneficial interest in viaticated policies in
13 connection with a financing transaction and that complies with
14 Section 1111.0023.

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

20 (12) "Terminally ill" means having an illness or
21 sickness that reasonably is expected to result in death in 24 months
22 or less.

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

26 (A) a bank, savings bank, savings and loan
27 association, credit union, or other licensed lending institution

1 that takes an assignment of a policy as collateral for a loan;

2 (B) the issuer of a policy providing accelerated
3 benefits pursuant to the policy;

4 (C) an authorized or eligible insurer that
5 provides stop-loss coverage to a viatical settlement provider,
6 financing entity, special purpose entity, or related provider
7 trust;

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

11 (E) a financing entity;

12 (F) a special purpose entity;

13 (G) a related provider trust; or

14 (H) an accredited investor or qualified
15 institutional buyer as defined by Regulation D, Rule 501, or Rule
16 144A adopted under the Federal Securities Act of 1933 who purchases
17 a viaticated policy from a viatical settlement provider.

18 (14) "Viaticated policy" means a policy that has been
19 acquired by a viatical settlement provider under a viatical
20 settlement contract.

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

27 (A) a registrant under this subchapter,

1 including a life insurance agent;

2 (B) an accredited investor or qualified
3 institutional buyer as defined by Regulation D, Rule 501, or Rule
4 144A adopted under the Federal Securities Act of 1933;

5 (C) a financing entity;

6 (D) a special purpose entity; or

7 (E) a related provider trust

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

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

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

18 SECTION 2. Subchapter A, Chapter 1111, Insurance Code, is
19 amended by adding Sections 1111.0021, 1111.0022, and 1111.0023 to
20 read as follows:

21 Sec. 1111.0021. VIATICAL SETTLEMENT CONTRACT DEFINED. (a)
22 "Viatical settlement contract" means a written agreement
23 establishing the terms under which compensation or anything of
24 value is paid that is less than the expected death benefit of the
25 policy in return for the viator's assignment, transfer, sale,
26 devise, or bequest of the death benefit or ownership of any portion
27 of the policy.

1 (b) The term includes:

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

4 (A) an individual or group life insurance policy,
5 other than a loan by a life insurance company under the terms of the
6 policy; or

7 (B) a loan secured by the cash value of a policy;
8 and

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

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

15 Sec. 1111.0022. FRAUDULENT INSURANCE ACT. A fraudulent
16 viatical settlement act is a fraudulent insurance act for the
17 purposes of Chapter 701.

18 Sec. 1111.0023. RELATED PROVIDER TRUST AGREEMENT. A
19 related provider trust must have a written agreement with the
20 registered viatical settlement provider under which the registered
21 viatical settlement provider is responsible for ensuring
22 compliance with all statutory and regulatory requirements and under
23 which the trust agrees to make all records and files related to
24 viatical settlement transactions available to the commissioner as
25 if those records and files were maintained directly by the
26 registered viatical settlement provider.

27 SECTION 3. Section 1111.003, Insurance Code, is amended by

1 amending Subsections (a), (b), and (c) to read as follows:

2 (a) The [~~To implement this subchapter, the~~] commissioner
3 shall adopt [~~reasonable~~] rules to implement this subchapter
4 [~~relating to life settlements and relating to viatical~~
5 ~~settlements~~].

6 (b) The rules adopted by the commissioner under this section
7 must include [~~rules governing~~]:

8 (1) appropriate registration procedures, fees, and
9 standards for [~~of~~] a person engaged in the business of viatical
10 [~~life~~] settlements;

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

13 (3) requirements for a bond or another mechanism for
14 financial accountability for a viatical settlement provider
15 [~~approval of contract forms~~];

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

19 (5) standards for the relationship and
20 responsibilities of an insurer and a viatical settlement provider,
21 life insurance agent, and others in the business of viatical
22 settlements during the period of consideration of effectuation of a
23 viatical settlement contract [~~prohibited practices relating to:~~

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

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

1 ~~[(6) assignment or resale of life insurance policies;~~
2 ~~[(7) maintenance of appropriate confidentiality of~~
3 ~~personal and medical information; and~~
4 ~~[(8) the responsibility of a registrant to ensure~~
5 ~~compliance with this subchapter and rules relating to life or~~
6 ~~viatical settlements after the registration is revoked, suspended,~~
7 ~~or otherwise lapses].~~

8 (c) Standards adopted by the [The] commissioner under
9 Subsection (b)(4) may include the regulation of discount rates used
10 to determine the amount paid in exchange for assignment, transfer,
11 sale, devise, or bequest of a benefit under a policy [may not adopt
12 a rule establishing a price or fee for the sale or purchase of a life
13 settlement. This subsection does not prohibit the commissioner
14 from adopting a rule relating to an unjust price or fee for the sale
15 or purchase of a life settlement].

16 SECTION 4. Section 1111.004, Insurance Code, is amended to
17 read as follows:

18 Sec. 1111.004. LICENSING AND REGISTRATION REQUIREMENTS.

19 (a) A person may not negotiate a viatical settlement contract
20 between a viator and one or more viatical settlement providers
21 unless the person is a life insurance agent.

22 (b) A life insurance agent is considered to meet the
23 licensing requirements of a viatical settlement broker and may
24 operate as a viatical settlement broker under this subchapter if:

25 (1) the agent has been registered or licensed as a
26 resident life insurance agent or agent with the authority to sell
27 life insurance in the agent's home state for at least one year;

1 (2) the agent completes a form adopted by the
2 department that includes an acknowledgment by the agent that the
3 agent will operate as a viatical settlement broker in accordance
4 with this subchapter; and

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

9 SECTION 5. Subchapter A, Chapter 1111, Insurance Code, is
10 amended by adding Section 1111.0041 to read as follows:

11 Sec. 1111.0041. EXEMPTIONS. (a) The following persons are
12 exempt from Section 1111.004:

13 (1) a person registered or licensed as an attorney;
14 and

15 (2) a certified public accountant or financial planner
16 accredited by a nationally recognized accreditation agency:

17 (A) who is retained to represent the viator; and

18 (B) whose compensation is not paid directly or
19 indirectly by the viatical settlement.

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

22 SECTION 6. Section 1111.005, Insurance Code, is amended by
23 amending Subsection (a) and adding Subsection (d) to read as
24 follows:

25 (a) The commissioner may suspend or revoke a registration or
26 deny an application for registration if the commissioner determines
27 that:

1 (1) the registrant or applicant, individually or
2 through any officer, director, or shareholder of the registrant or
3 applicant:

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

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

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

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

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

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

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

17 (E) [~~(5)~~] was guilty of fraudulent or dishonest
18 practices;

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

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

26 (2) the registrant or applicant or any officer,
27 partner, member, or member of key management personnel has been

1 found guilty of, or has pleaded guilty or nolo contendere to, any
2 [(8) was convicted of a] felony or [was convicted of a] misdemeanor
3 involving moral turpitude or fraud, regardless of whether a
4 judgment or conviction was entered by the court.

5 (d) The commissioner may suspend, revoke, or refuse to
6 renew the registration of a life insurance agent if the
7 commissioner finds that the life insurance agent has violated this
8 subchapter.

9 SECTION 7. Section 1111.006, Insurance Code, is amended to
10 read as follows:

11 Sec. 1111.006. APPLICABILITY OF OTHER INSURANCE LAWS.

12 (a) The following laws apply to a person engaged in the business of
13 life or viatical settlements:

14 (1) Articles 1.10 and ~~[1.10D]~~, 1.19 ~~[and 21.21]~~;

15 (2) Chapters 82, 83, ~~and~~ 84, 541, and 701;

16 (3) Sections 31.002, 32.001, 32.002, 32.003, 32.021,
17 32.023, 32.041, 38.001, 81.004, 543.001, 801.056, and 862.052; and

18 (4) Subchapter C, Chapter 36.

19 (b) If there is more than one owner of a single policy and
20 the owners are residents of different states, the viatical
21 settlement transaction shall be governed by the law of the state in
22 which the owner having the largest percentage ownership resides or,
23 if the owners hold equal ownership, the state of residence of one
24 owner agreed upon in writing by all owners.

25 SECTION 8. Subchapter A, Chapter 1111, Insurance Code, is
26 amended by adding Sections 1111.007, 1111.008, 1111.009, 1111.010,
27 and 1111.011 to read as follows:

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

5 (b) Any viatical settlement contract form or disclosure
6 form filed with the commissioner is considered approved if the form
7 or disclosure is not disapproved by the commissioner on or before
8 the 60th day after the date of the filing.

9 (c) The commissioner shall disapprove a viatical settlement
10 contract form or disclosure statement form if, in the
11 commissioner's opinion, the contract or provisions contained in the
12 contract are unreasonable, contrary to the interests of the public,
13 or otherwise misleading or unfair to the viator.

14 (d) A viatical settlement contract and an application for a
15 viatical settlement contract, regardless of the form of
16 transmission, must contain the following statement or a
17 substantially similar statement:

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

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

25 Sec. 1111.008. REPORTS. (a) Each viatical settlement
26 provider shall file with the commissioner by March 1 of each year an
27 annual statement containing information required by the

1 commissioner by rule.

2 (b) Information is required by this section only with
3 respect to transactions in which the viator is a resident of this
4 state. The commissioner may not require:

5 (1) individual transaction data regarding the
6 business of viatical settlements; or

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

9 Sec. 1111.009. DISCLOSURES. An insurance company shall
10 send written notice as required by this section to the owner of each
11 policy issued by the company under which the insured is 60 years of
12 age or older or is known to be terminally ill or chronically ill
13 that a viatical settlement contract is an available alternative
14 transaction to the owner. The notice must be sent:

15 (1) at the time the insurance company:

16 (A) receives from the owner a request to
17 surrender, wholly or partly, the policy;

18 (B) receives from the owner a request to receive
19 an accelerated death benefit under the policy;

20 (C) receives from the owner a request
21 collaterally to assign a policy as security for a loan; or

22 (D) sends to the owner a notice that the policy
23 has lapsed; or

24 (2) any other time the commissioner requires by rule.

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

27 (b) A person may not knowingly or intentionally interfere

1 with the enforcement of this subchapter or investigations of
2 suspected or actual violations of this subchapter.

3 (c) A person in the business of viatical settlements may not
4 knowingly or intentionally permit a person convicted of a felony
5 involving dishonesty or breach of trust to participate in the
6 business of viatical settlements.

7 (d) Reporting of suspected fraudulent viatical settlement
8 acts to the department shall be treated in the same manner as
9 reporting of fraudulent insurance acts under Chapter 701 and both
10 the confidentiality and immunity provisions of that chapter shall
11 apply to that reporting.

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

16 (b) Regardless of the source of compensation, a life
17 insurance agent is considered to represent only the viator and owes
18 a fiduciary duty to the viator to act according to the viator's
19 instructions and in the viator's best interests.

20 (c) A person registered under this subchapter or a person
21 licensed or authorized to engage in business under this code may
22 not:

23 (1) prohibit, restrict, limit, or impair a registered
24 life insurance agent from aiding and assisting the owner of a policy
25 with a settlement or otherwise participating in a settlement
26 transaction under this subchapter; or

27 (2) engage in any transaction, act, practice, or

1 course of business or dealing that restricts, limits, or impairs in
2 any way the lawful transfer of ownership, change of beneficiary, or
3 assignment of a policy to effectuate a viatical settlement
4 contract.

5 (d) A violation of this subchapter is considered an unfair
6 method of competition or an unfair or deceptive act or practice in
7 the business of insurance under Chapter 541.

8 SECTION 9. Section 1111.003(d), Insurance Code, is
9 repealed.

10 SECTION 10. (a) A person who, immediately before February
11 1, 2005, is a life settlement or viatical broker registered with
12 the Texas Department of Insurance is not required to obtain the
13 appropriate license as required by Chapter 1111, Insurance Code,
14 before September 1, 2006, to continue to comply with Chapter 1111,
15 Insurance Code.

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

21 SECTION 11. The commissioner of insurance shall adopt all
22 rules necessary to implement Chapter 1111, Insurance Code, as
23 amended by this Act, to take effect not later than March 1, 2006.

24 SECTION 12. This Act takes effect September 1, 2005.