

1-1 By: Armbrister S.B. No. 1323  
1-2 (In the Senate - Filed March 10, 2005; March 21, 2005, read  
1-3 first time and referred to Committee on State Affairs;  
1-4 April 21, 2005, reported adversely, with favorable Committee  
1-5 Substitute by the following vote: Yeas 8, Nays 0; April 21, 2005,  
1-6 sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 1323 By: Armbrister

1-8 A BILL TO BE ENTITLED  
1-9 AN ACT

1-10 relating to the regulation of viatical settlement agreements and  
1-11 life settlement agreements; providing penalties.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. Section 1111.001, Insurance Code, is amended to  
1-14 read as follows:

1-15 Sec. 1111.001. DEFINITIONS. In this subchapter:

1-16 (1) "Advertising" means any written, electronic, or  
1-17 printed communication, or any communication by means of recorded  
1-18 telephone messages or transmitted on radio, television, the  
1-19 Internet, or similar communications media, including filmstrips,  
1-20 motion pictures, and videos, that is published, disseminated,  
1-21 circulated, or placed directly before the public in this state for  
1-22 the purpose of creating an interest in or inducing a person to sell,  
1-23 assign, devise, bequest, or transfer the death benefit or ownership  
1-24 of a policy pursuant to a viatical settlement contract ["Life  
1-25 settlement" means an agreement that is solicited, negotiated,  
1-26 offered, entered into, delivered, or issued for delivery in this  
1-27 state under which a person pays anything of value that is:

1-28 [(A) less than the expected death benefit of a  
1-29 policy insuring the life of an individual who does not have a  
1-30 catastrophic or life-threatening illness or condition; and

1-31 [(B) paid in return for the policy owner's or  
1-32 certificate holder's assignment, transfer, bequest, devise, or  
1-33 sale of the death benefit under or ownership of the policy].

1-34 (2) "Business of viatical settlements" means an  
1-35 activity involved in, but not limited to, the offering,  
1-36 solicitation, negotiation, procurement, effectuation, purchasing,  
1-37 investing, financing, monitoring, tracking, underwriting, selling,  
1-38 transferring, assigning, pledging, or hypothecating of viatical  
1-39 settlement contracts.

1-40 (3) "Chronically ill" means:

1-41 (A) being unable to perform at least two  
1-42 activities of daily living including eating, toileting,  
1-43 transferring, bathing, dressing, or continence;

1-44 (B) requiring substantial supervision to protect  
1-45 the individual from threats to health and safety due to severe  
1-46 cognitive impairment; or

1-47 (C) having a level of disability similar to that  
1-48 described in Paragraph (A) as determined by the secretary of the  
1-49 United States Department of Health and Human Services.

1-50 (4) "Financing entity" means an underwriter,  
1-51 placement agent, lender, purchaser of securities, purchaser of a  
1-52 policy or certificate from a viatical settlement provider, credit  
1-53 enhancer, or person that has a direct ownership in a policy that is  
1-54 the subject of a viatical settlement contract, but whose principal  
1-55 activity related to the transaction is providing funds to effect  
1-56 the viatical settlement or purchase of one or more viaticated  
1-57 policies and who has an agreement in writing with one or more  
1-58 registered viatical settlement providers to finance the  
1-59 acquisition of viatical settlement contracts or to provide  
1-60 stop-loss insurance. The term does not include a nonaccredited  
1-61 investor.

1-62 (5) "Fraudulent viatical settlement act" means:

1-63 (A) an act or omission that is:

2-1                    (i) a violation of a penal law and that is  
2-2 committed or attempted to be committed while engaging in the  
2-3 business of viatical settlements or as part of or in support of a  
2-4 viatical settlement; or  
2-5                    (ii) part of an attempt to defraud a  
2-6 viatical settlement provider, financing entity, agent, viator, or  
2-7 other person in the business of viatical settlements;  
2-8                    (B) knowingly or intentionally engaging in any  
2-9 act or omission involving the presentation of false information or  
2-10 the concealment of material information, in order to induce any  
2-11 life insurance company, viatical settlement broker, or viatical  
2-12 settlement provider to issue, present, broker, purchase, or  
2-13 transfer a policy in a viatical settlement; or  
2-14                    (C) an attempt to commit or to assist, aid, or  
2-15 abet the commission of, or the conspiracy to commit the acts or  
2-16 omissions described by this subdivision.  
2-17                    (6) "Life insurance agent" means a person who holds a  
2-18 general life, accident, and health license under Section 4054.051.  
2-19                    (7) "Person" means an individual, corporation, trust,  
2-20 partnership, association, or any other legal entity.  
2-21                    (8) "Policy" means an individual or group life  
2-22 insurance policy or a group certificate, contract, or arrangement  
2-23 of life insurance affecting the rights of a resident of this state  
2-24 or bearing a reasonable relation to this state, regardless of  
2-25 whether delivered or issued for delivery in this state.  
2-26                    (9) "Related provider trust" means a titling trust or  
2-27 other trust established by a registered viatical settlement  
2-28 provider or a financing entity for the sole purpose of holding the  
2-29 ownership or beneficial interest in viaticated policies in  
2-30 connection with a financing transaction and that complies with  
2-31 Section 1111.0023.  
2-32                    (10) "Special purpose entity" means a corporation,  
2-33 partnership, trust, limited liability company, or other similar  
2-34 entity formed only to directly or indirectly provide access to  
2-35 institutional capital markets for a financing entity or registered  
2-36 viatical settlement provider.  
2-37                    (11) "Terminally ill" means having an illness or  
2-38 sickness as certified by a physician that reasonably is expected to  
2-39 result in death in 24 months or less.  
2-40                    (12) "Viatical settlement broker" means a person who,  
2-41 on behalf of a viator and for a fee, commission, or other valuable  
2-42 consideration, offers or attempts to negotiate viatical settlement  
2-43 contracts between a viator and one or more viatical settlement  
2-44 providers. A viatical settlement broker is deemed to represent  
2-45 only the viator, and not the insurer or the viatical settlement  
2-46 provider, and owes a duty to the viator to act according to the  
2-47 viator's instructions. The insurer that issued the policy being  
2-48 viaticated is not responsible for any act or omission of the  
2-49 viatical settlement broker or viatical settlement provider arising  
2-50 out of or in connection with a viatical settlement transaction,  
2-51 unless the insurer receives compensation from the viatical  
2-52 settlement provider or viatical settlement broker for the viatical  
2-53 settlement contract.  
2-54                    (13) "Viatical settlement provider" means a person,  
2-55 other than a viator, who enters into or effectuates a viatical  
2-56 settlement contract. The term does not include:  
2-57                    (A) a bank, savings bank, savings and loan  
2-58 association, credit union, or other licensed lending institution  
2-59 that takes an assignment of a policy as collateral for a loan;  
2-60                    (B) the issuer of a policy providing accelerated  
2-61 benefits pursuant to the policy;  
2-62                    (C) an authorized or eligible insurer that  
2-63 provides stop-loss coverage to a viatical settlement provider,  
2-64 financing entity, special purpose entity, or related provider  
2-65 trust;  
2-66                    (D) an individual who enters into or effectuates  
2-67 not more than one agreement in a calendar year for the transfer of  
2-68 policies for any value less than the expected death benefit;  
2-69                    (E) a financing entity;

- 3-1 (F) a special purpose entity;
- 3-2 (G) a related provider trust; or
- 3-3 (H) an accredited investor or qualified
- 3-4 institutional buyer as defined by Regulation D, Rule 501, or Rule
- 3-5 144A adopted under the federal Securities Act of 1933 who purchases
- 3-6 a viaticated policy from a viatical settlement provider.

3-7 (14) "Viaticated policy" means a policy that has been

3-8 acquired by a viatical settlement provider under a viatical

3-9 settlement contract.

3-10 (15) "Viator" means an owner of a policy who is a

3-11 resident of this state and who enters or seeks to enter into a

3-12 viatical settlement contract. Except as otherwise provided by this

3-13 subchapter, a viator is not limited to an owner of a policy insuring

3-14 the life of an individual with a terminal or chronic illness or

3-15 condition. The term does not include:

- 3-16 (A) a registrant under this subchapter,
- 3-17 including a life insurance agent;
- 3-18 (B) an accredited investor or qualified
- 3-19 institutional buyer as defined by Regulation D, Rule 501, or Rule
- 3-20 144A adopted under the federal Securities Act of 1933;
- 3-21 (C) a financing entity;
- 3-22 (D) a special purpose entity; or
- 3-23 (E) a related provider trust

3-24 ~~[(3) "Viatical settlement" means an agreement that is~~

3-25 ~~solicited, negotiated, offered, entered into, delivered, or issued~~

3-26 ~~for delivery in this state under which a person pays anything of~~

3-27 ~~value that is:~~

3-28 ~~[(A) less than the expected death benefit of a~~

3-29 ~~policy insuring the life of an individual who has a catastrophic or~~

3-30 ~~life-threatening illness or condition; and~~

3-31 ~~[(B) paid in return for the policy owner's or~~

3-32 ~~certificate holder's assignment, transfer, bequest, devise, or~~

3-33 ~~sale of the death benefit under or ownership of the policy].~~

3-34 SECTION 2. Section 1111.002, Insurance Code, is amended to

3-35 read as follows:

3-36 Sec. 1111.002. PURPOSE; CONSTRUCTION WITH CERTAIN OTHER

3-37 LAW. (a) The purpose of this subchapter is to:

- 3-38 (1) provide for registration of persons engaged in the
- 3-39 business of ~~[life or]~~ viatical settlements; ~~[and]~~
- 3-40 (2) provide consumer protection for a person who may
- 3-41 sell or otherwise transfer the person's life insurance policy; and
- 3-42 (3) provide that the department has exclusive
- 3-43 jurisdiction in this state to regulate viatical settlements.

3-44 (b) This chapter does not affect the jurisdiction of the

3-45 State Securities Board under The Securities Act (Article 581-1 et

3-46 seq., Vernon's Texas Civil Statutes) in the regulation of

3-47 securities.

3-48 SECTION 3. Subchapter A, Chapter 1111, Insurance Code, is

3-49 amended by adding Sections 1111.0021, 1111.0022, and 1111.0023 to

3-50 read as follows:

3-51 Sec. 1111.0021. VIATICAL SETTLEMENT CONTRACT DEFINED.

3-52 (a) "Viatical settlement contract" means a written agreement

3-53 establishing the terms under which compensation or anything of

3-54 value is paid that is less than the expected death benefit of the

3-55 policy in return for the viator's assignment, transfer, sale,

3-56 devise, or bequest of the death benefit or ownership of any portion

3-57 of the policy.

3-58 (b) The term includes:

3-59 (1) a contract for a loan or other financing

3-60 transaction with a viator secured primarily by:

3-61 (A) an individual or group life insurance policy,

3-62 other than a loan by a life insurance company under the terms of the

3-63 policy; or

3-64 (B) a loan secured by the cash value of a policy;

3-65 and

3-66 (2) an agreement with a viator to transfer ownership

3-67 or change the beneficiary designation at a later date, regardless

3-68 of the date that compensation is paid to the viator.

3-69 (c) The term does not include a written agreement entered

4-1 into between a viator and a person having an insurable interest in  
4-2 the insured's life.

4-3 Sec. 1111.0022. FRAUDULENT INSURANCE ACT. A fraudulent  
4-4 viatical settlement act is a fraudulent insurance act for the  
4-5 purposes of Chapter 701.

4-6 Sec. 1111.0023. RELATED PROVIDER TRUST AGREEMENT. A  
4-7 related provider trust must have a written agreement with the  
4-8 registered viatical settlement provider under which the registered  
4-9 viatical settlement provider is responsible for ensuring  
4-10 compliance with all statutory and regulatory requirements and under  
4-11 which the trust agrees to make all records and files related to  
4-12 viatical settlement transactions available to the commissioner as  
4-13 if those records and files were maintained directly by the  
4-14 registered viatical settlement provider.

4-15 SECTION 4. Section 1111.003, Insurance Code, is amended to  
4-16 read as follows:

4-17 Sec. 1111.003. RULES; REGISTRATION AND REGULATION.  
4-18 (a) The [To implement this subchapter, the] commissioner may  
4-19 [shall] adopt [reasonable] rules to implement this subchapter  
4-20 [relating to life settlements and relating to viatical  
4-21 settlements].

4-22 (b) The rules adopted by the commissioner under this section  
4-23 may [must] include [rules governing]:

4-24 (1) registration procedures, fees, and standards for  
4-25 [of] a person engaged in the business of viatical [life]  
4-26 settlements;

4-27 (2) fees for a life insurance agent [registration of a  
4-28 person] engaged in the business of viatical settlements;

4-29 (3) requirements for a bond or another mechanism for  
4-30 financial accountability for a viatical settlement provider  
4-31 [approval of contract forms];

4-32 (4) standards for evaluating the reasonableness of  
4-33 payments under a viatical settlement contract for a person who is  
4-34 terminally or chronically ill [disclosure requirements]; and

4-35 (5) standards for the relationship and  
4-36 responsibilities of an insurer and a viatical settlement provider,  
4-37 viatical settlement broker, and others in the business of viatical  
4-38 settlements during the period of consideration of effectuation of a  
4-39 viatical settlement contract [prohibited practices relating to:

4-40 [ (A) unfair discrimination in the provision of  
4-41 life or viatical settlements; and

4-42 [ (B) referral fees paid by persons engaged in the  
4-43 business of life or viatical settlements;

4-44 [ (6) assignment or resale of life insurance policies;

4-45 [ (7) maintenance of appropriate confidentiality of  
4-46 personal and medical information; and

4-47 [ (8) the responsibility of a registrant to ensure  
4-48 compliance with this subchapter and rules relating to life or  
4-49 viatical settlements after the registration is revoked, suspended,  
4-50 or otherwise lapses].

4-51 (c) [The commissioner may not adopt a rule establishing a  
4-52 price or fee for the sale or purchase of a life settlement. This  
4-53 subsection does not prohibit the commissioner from adopting a rule  
4-54 relating to an unjust price or fee for the sale or purchase of a life  
4-55 settlement.

4-56 [ (d) ] The commissioner may not adopt a rule that regulates  
4-57 the actions of an investor providing money to a [life or] viatical  
4-58 settlement company.

4-59 SECTION 5. Section 1111.004, Insurance Code, is amended to  
4-60 read as follows:

4-61 Sec. 1111.004. REGISTRATION REQUIREMENTS. (a) A person  
4-62 may not negotiate a viatical settlement contract between a viator  
4-63 and one or more viatical settlement providers unless the person is a  
4-64 viatical settlement broker.

4-65 (b) A life insurance agent is deemed to meet the  
4-66 registration requirements of this section and is permitted to  
4-67 operate as a viatical settlement broker if the agent:

4-68 (1) is licensed as a general life, accident, and  
4-69 health insurance agent for at least one year;

5-1 (2) has not been convicted of a felony involving  
5-2 dishonesty or breach of trust; and

5-3 (3) not later than the 30th day after the first day the  
5-4 agent operates as a viatical settlement broker:

5-5 (A) completes a form adopted by the department  
5-6 that includes an acknowledgment by the agent that the agent will  
5-7 operate as a viatical settlement broker in accordance with this  
5-8 subchapter; and

5-9 (B) pays a fee set by the commissioner [ANNUAL  
5-10 ~~FEE FOR REGISTRATION. The commissioner may adopt rules requiring~~  
5-11 ~~payment of an annual fee in connection with registration. The fee~~  
5-12 ~~may not exceed \$250].~~

5-13 SECTION 6. Subchapter A, Chapter 1111, Insurance Code, is  
5-14 amended by adding Section 1111.0041 to read as follows:

5-15 Sec. 1111.0041. EXEMPTIONS. (a) A person who is retained  
5-16 to represent the viator and whose compensation is not paid directly  
5-17 or indirectly by the viatical settlement is exempt from Section  
5-18 1111.004 if the person is:

5-19 (1) registered or licensed as an attorney; or

5-20 (2) a certified public accountant or financial planner  
5-21 accredited by a nationally recognized accreditation agency.

5-22 (b) Section 4001.052 does not apply to a life insurance  
5-23 agent representing a viator.

5-24 SECTION 7. Section 1111.005, Insurance Code, is amended by  
5-25 amending Subsection (a) and adding Subsection (d) to read as  
5-26 follows:

5-27 (a) The commissioner may suspend or revoke a registration or  
5-28 deny an application for registration if the commissioner determines  
5-29 that:

5-30 (1) the registrant or applicant, individually or  
5-31 through any officer, director, or shareholder of the registrant or  
5-32 applicant:

5-33 (A) [(1)] wilfully violated:

5-34 (i) [(A)] this subchapter;

5-35 (ii) [(B)] an applicable provision of this  
5-36 code or another insurance law of this state; or

5-37 (iii) [(C)] a rule adopted under a law  
5-38 described by Subparagraph (i) [Paragraph (A)] or (ii) [(B)];

5-39 (B) [(2)] intentionally made a material  
5-40 misstatement in the application for registration;

5-41 (C) [(3)] obtained or attempted to obtain  
5-42 registration by fraud or misrepresentation;

5-43 (D) [(4)] misappropriated, converted to the  
5-44 registrant's or applicant's own use, or illegally withheld money  
5-45 belonging to a party to a life or viatical settlement;

5-46 (E) [(5)] was guilty of fraudulent or dishonest  
5-47 practices;

5-48 (F) [(6)] materially misrepresented the terms of  
5-49 business conducted under this subchapter or any other provision of  
5-50 this code or another insurance law of this state; or

5-51 (G) [(7)] made or issued, or caused to be made or  
5-52 issued, a statement materially misrepresenting or making  
5-53 incomplete comparisons regarding the material terms of any business  
5-54 conducted under this subchapter; or

5-55 (2) the registrant or applicant or any officer,  
5-56 partner, member, or member of key management personnel has been  
5-57 found guilty of, or has pleaded guilty or nolo contendere to, any  
5-58 [(8) was convicted of a] felony or [was convicted of a]  
5-59 misdemeanor involving moral turpitude or fraud, regardless of  
5-60 whether a judgment or conviction was entered by the court.

5-61 (d) The commissioner may suspend, revoke, or refuse to renew  
5-62 the registration of a viatical settlement broker if the  
5-63 commissioner finds that the viatical settlement broker has violated  
5-64 this subchapter.

5-65 SECTION 8. Section 1111.006, Insurance Code, is amended to  
5-66 read as follows:

5-67 Sec. 1111.006. APPLICABILITY OF OTHER INSURANCE LAWS.

5-68 (a) The following laws apply to a person engaged in the business of  
5-69 [life or] viatical settlements:

- 6-1 (1) Articles 1.10 and [~~1.10D~~] 1.19 [~~and 21.21~~];
- 6-2 (2) Chapters 82, 83, [~~and~~] 84, 541, and 701;
- 6-3 (3) Sections 31.002, 32.001, 32.002, 32.003, 32.021,
- 6-4 32.023, 32.041, 38.001, 81.004, 543.001, 801.056, and 862.052; and
- 6-5 (4) Subchapter C, Chapter 36.

6-6 (b) If there is more than one owner of a single policy and  
 6-7 the owners are residents of different states, the viatical  
 6-8 settlement transaction shall be governed by the law of the state in  
 6-9 which the owner having the largest percentage ownership resides or,  
 6-10 if the owners hold equal ownership, the state of residence of one  
 6-11 owner agreed upon in writing by all owners.

6-12 SECTION 9. Subchapter A, Chapter 1111, Insurance Code, is  
 6-13 amended by adding Sections 1111.007 through 1111.012 to read as  
 6-14 follows:

6-15 Sec. 1111.007. FORMS. (a) A person may not use a viatical  
 6-16 settlement contract or provide to a viator a disclosure statement  
 6-17 form in this state unless filed with and approved by the  
 6-18 commissioner.

6-19 (b) Any viatical settlement contract form or viator  
 6-20 disclosure form filed with the commissioner is considered approved  
 6-21 if the form or disclosure is not disapproved by the commissioner on  
 6-22 or before the 60th day after the date of the filing.

6-23 (c) The commissioner shall disapprove a viatical settlement  
 6-24 contract form or viator disclosure statement form if, in the  
 6-25 commissioner's opinion, the contract or provisions contained in the  
 6-26 contract are unreasonable, contrary to the interests of the public,  
 6-27 or otherwise misleading or unfair to the viator.

6-28 (d) A viatical settlement contract and an application for a  
 6-29 viatical settlement contract, regardless of the form of  
 6-30 transmission, must contain the following statement or a  
 6-31 substantially similar statement:

6-32 "Any person who knowingly presents false information in an  
 6-33 application for insurance or a viatical settlement contract is  
 6-34 guilty of a crime and, on conviction, may be subject to fines or  
 6-35 confinement in prison, or both."

6-36 (e) The lack of a statement required by Subsection (d) does  
 6-37 not constitute a defense in any prosecution for a fraudulent  
 6-38 viatical settlement act.

6-39 Sec. 1111.008. REPORTS. (a) Each viatical settlement  
 6-40 provider shall file with the commissioner by March 1 of each year an  
 6-41 annual statement containing information required by the  
 6-42 commissioner by rule.

6-43 (b) Information is required by this section only with  
 6-44 respect to transactions in which the viator is a resident of this  
 6-45 state or in which the viatical settlement provider is located in  
 6-46 this state. The commissioner may not require:

- 6-47 (1) individual transaction data regarding the  
 6-48 business of viatical settlements; or
- 6-49 (2) data that compromises the privacy of personal,  
 6-50 financial, and health information of the viator or insured.

6-51 Sec. 1111.009. DISCLOSURES. (a) With each application for  
 6-52 a viatical settlement, a viatical settlement provider or viatical  
 6-53 settlement broker shall provide the viator with at least the  
 6-54 following disclosures not later than the time the application for  
 6-55 the viatical settlement contract is signed by all parties. The  
 6-56 disclosures shall be provided in a separate document that is signed  
 6-57 by the viator and the viatical settlement provider or viatical  
 6-58 settlement broker and must:

- 6-59 (1) state that:
  - 6-60 (A) there are possible alternatives to viatical  
 6-61 settlement contracts, including any accelerated death benefits or  
 6-62 policy loans offered under the viator's life insurance policy;
  - 6-63 (B) some or all of the proceeds of the viatical  
 6-64 settlement may be taxable under federal income tax law or state  
 6-65 franchise or income tax law and assistance should be sought from a  
 6-66 professional tax advisor;
  - 6-67 (C) proceeds of the viatical settlement could be  
 6-68 subject to the claims of creditors;
  - 6-69 (D) receipt of the proceeds of a viatical

7-1 settlement may adversely affect the viator's eligibility for  
 7-2 Medicaid or other government benefits or entitlements and advice  
 7-3 should be obtained from the appropriate government agencies;

7-4 (E) the viator has the right to rescind a  
 7-5 viatical settlement contract for 15 calendar days after the receipt  
 7-6 of the viatical settlement proceeds by the viator, and if the  
 7-7 insured dies during the rescission period, the settlement contract  
 7-8 is deemed to have been rescinded, subject to repayment of all  
 7-9 viatical settlement proceeds and any premiums, loans, and loan  
 7-10 interest to the viatical settlement provider or purchaser;

7-11 (F) funds will be sent to the viator on or before  
 7-12 the third business day after the date the viatical settlement  
 7-13 provider receives the insurer's or group administrator's  
 7-14 acknowledgment that ownership of the policy or interest in the  
 7-15 certificate has been transferred and the beneficiary has been  
 7-16 designated; and

7-17 (G) entering into a viatical settlement contract  
 7-18 may cause other rights or benefits, including conversion rights and  
 7-19 waiver of premium benefits that may exist under the policy or  
 7-20 certificate, to be forfeited by the viator and assistance should be  
 7-21 sought from a financial advisor;

7-22 (2) include a brochure describing the process of  
 7-23 viatical settlements based on:

7-24 (A) a form developed by the commissioner; or  
 7-25 (B) if the commissioner does not develop a form,  
 7-26 the National Association of Insurance Commissioner's form;

7-27 (3) contain the following language: "All medical,  
 7-28 financial, or personal information solicited or obtained by a  
 7-29 viatical settlement provider or viatical settlement broker about an  
 7-30 insured, including the insured's identity or the identity of family  
 7-31 members, a spouse, or significant other may be disclosed as  
 7-32 necessary to effect the viatical settlement between the viator and  
 7-33 the viatical settlement provider. If you are asked to provide this  
 7-34 information, you will be asked to consent to the disclosure. The  
 7-35 information may be provided to someone who buys the policy or  
 7-36 provides funds for the purchase. You may be asked to renew your  
 7-37 permission to share information every two years."; and

7-38 (4) state that:  
 7-39 (A) the insured may be contacted by either the  
 7-40 viatical settlement provider or broker or the provider's or  
 7-41 broker's authorized representative for the purpose of determining  
 7-42 the insured's health status; and

7-43 (B) this contact is limited to once every three  
 7-44 months if the insured has a life expectancy of more than one year,  
 7-45 and not more than once per month if the insured has a life  
 7-46 expectancy of one year or less.

7-47 (b) A viatical settlement provider shall provide the viator  
 7-48 with at least the following disclosures not later than the date the  
 7-49 viatical settlement contract is signed by all parties. The  
 7-50 disclosures shall be conspicuously displayed in the viatical  
 7-51 settlement contract or in a separate document signed by the viator  
 7-52 and the viatical settlement provider or viatical settlement broker  
 7-53 and state:

7-54 (1) the affiliation, if any, between the viatical  
 7-55 settlement provider and the issuer of the insurance policy to be  
 7-56 viaticated;

7-57 (2) the name, address, and telephone number of the  
 7-58 viatical settlement provider;

7-59 (3) that if an insurance policy to be viaticated has  
 7-60 been issued as a joint policy or involves family riders or any  
 7-61 coverage of a life other than the insured under the policy to be  
 7-62 viaticated, the viator shall be informed of the possible loss of  
 7-63 coverage on the other lives under the policy and shall be advised to  
 7-64 consult with the viator's insurance producer or the insurer issuing  
 7-65 the policy for advice on the proposed viatical settlement;

7-66 (4) the dollar amount of the current death benefit  
 7-67 payable to the viatical settlement provider under the policy or  
 7-68 certificate, and if known, the availability of any additional  
 7-69 guaranteed insurance benefits, the dollar amount of any accidental

8-1 death and dismemberment benefits under the policy or certificate,  
8-2 and the viatical settlement provider's interest in those benefits;  
8-3 and

8-4 (5) the name, business address, and telephone number  
8-5 of the independent third-party escrow agent and that the viator or  
8-6 owner may inspect or receive copies of the relevant escrow or trust  
8-7 agreements or documents.

8-8 (c) If the provider transfers ownership or changes the  
8-9 beneficiary of the insurance policy, the provider shall communicate  
8-10 the change in ownership or beneficiary to the insured on or before  
8-11 the 20th day after the date of the change.

8-12 Sec. 1111.010. PROHIBITED ACTS. (a) A person may not  
8-13 commit a fraudulent viatical settlement act.

8-14 (b) A person may not knowingly or intentionally interfere  
8-15 with the enforcement of this subchapter or investigations of  
8-16 suspected or actual violations of this subchapter.

8-17 (c) A person in the business of viatical settlements may not  
8-18 knowingly or intentionally permit a person convicted of a felony  
8-19 involving dishonesty or breach of trust to participate in the  
8-20 business of viatical settlements.

8-21 (d) It is a violation of this subchapter for any person to  
8-22 enter into a viatical settlement contract within a two-year period  
8-23 commencing with the date of issuance of the insurance policy or  
8-24 certificate unless the viator certifies to the viatical settlement  
8-25 provider that one or more of the following conditions have been met  
8-26 within the two-year period:

8-27 (1) the policy was issued upon the viator's exercise of  
8-28 conversion rights arising out of a group or individual policy,  
8-29 provided the total of the time covered under the conversion policy  
8-30 plus the time covered under the prior policy is at least 24 months;  
8-31 or

8-32 (2) the time covered under a group policy shall be  
8-33 calculated without regard to any change in insurance carriers,  
8-34 provided the coverage has been continuous and under the same group  
8-35 sponsorship and the viator submits independent evidence to the  
8-36 viatical settlement provider that one or more of the following  
8-37 conditions have been met within the two-year period:

8-38 (A) the insured is terminally or chronically ill;  
8-39 or

8-40 (B) the viator or insured disposes of the  
8-41 viator's or insured's ownership interests in a closely held  
8-42 corporation pursuant to terms of a buyout or other similar  
8-43 agreement in effect at the time the insurance policy was originally  
8-44 issued.

8-45 (e) Copies of the certifications and independent evidence  
8-46 required by Subsection (d) must be submitted to the insurer at the  
8-47 time the viatical settlement provider submits a request to the  
8-48 insurer for verification of coverage. The copies must be  
8-49 accompanied by a letter of attestation from the viatical settlement  
8-50 provider that the copies are true and correct copies of the  
8-51 documents received by the viatical settlement provider.

8-52 Sec. 1111.011. TRADE PRACTICES. (a) A viatical settlement  
8-53 provider must pay an amount greater than:

8-54 (1) the cash surrender value; or  
8-55 (2) the accelerated death benefit if the policyholder  
8-56 qualifies for an accelerated death benefit.

8-57 (b) Regardless of the source of compensation, a viatical  
8-58 settlement broker is considered to represent only the viator and  
8-59 owes a fiduciary duty to the viator to act according to the viator's  
8-60 instructions and in the viator's best interests.

8-61 (c) A violation of this subchapter is considered an unfair  
8-62 method of competition or an unfair or deceptive act or practice in  
8-63 the business of insurance under Chapter 541.

8-64 Sec. 1111.012. TEXAS DEPARTMENT OF INSURANCE INVESTIGATION  
8-65 OF VIICAL SETTLEMENT FRAUD. (a) Any information or material  
8-66 acquired by the department that is relevant to suspected viatical  
8-67 settlement fraud shall be treated in the same manner as information  
8-68 or material acquired by the department that is relevant to an  
8-69 inquiry by the insurance fraud unit under Chapter 701 and the



9-1 confidentiality, privilege, and public records provisions of that  
9-2 chapter shall apply to this information or material.

9-3 (b) The immunity provisions of Chapter 701 apply to a person  
9-4 filing reports or furnishing, orally or in writing, other  
9-5 information concerning suspected, anticipated, or completed  
9-6 viatical settlement fraud.

9-7 SECTION 10. The heading of Chapter 1111, Insurance Code, is  
9-8 amended to read as follows:

9-9 CHAPTER 1111. [~~LIFE AND~~] VIATICAL SETTLEMENTS AND  
9-10 ACCELERATED TERM LIFE INSURANCE BENEFITS

9-11 SECTION 11. The heading of Subchapter A, Chapter 1111,  
9-12 Insurance Code, is amended to read as follows:

9-13 SUBCHAPTER A. [~~LIFE AND~~] VIATICAL SETTLEMENTS

9-14 SECTION 12. The commissioner of insurance shall adopt all  
9-15 rules necessary to implement Chapter 1111, Insurance Code, as  
9-16 amended by this Act, to take effect not later than March 1, 2006.

9-17 SECTION 13. This Act takes effect September 1, 2005.

9-18 \* \* \* \* \*