

BILL ANALYSIS

S.B. 1213
By: Carona
Insurance
Committee Report (Unamended)

BACKGROUND AND PURPOSE

A life settlement transaction is the sale to a third party of an existing insurance policy for more than its cash surrender value, but less than its net death benefit. Life settlements allow consumers to exercise their property right to assign their life insurance policy and obtain a competitive market value for the asset of insurance. Life settlement transactions are regulated by the Texas Department of Insurance (TDI) under Chapter 1111 (Life and Viatical Settlements and Accelerated Term Life Insurance Benefits), Insurance Code, which sets forth step-by-step transactional requirements, including disclosure of options to a life settlement, risks to life settlements, and other consumer disclosures.

Texas has not amended the statutes governing life settlement transactions since 1999, and S.B. 1213 updates Texas law to address the evolution of the industry during the last 12 years. S.B. 1213 adopts several key provisions from the life settlements model act adopted by the National Conference of Insurance Legislators. Much of this language exists in current Texas TDI rules, and S.B. 1213 will codify this language. In addition to updating the laws and definitions relating to Life Settlements, the Model Act is designed to prevent stranger-originated life insurance arrangements. S.B. 1213 limits how life settlement providers may advertise (including prohibitions on offers for "free" insurance), creates prohibited practices, and implements fraud prevention measures.

S.B. 1213 additionally updates licensing requirements for brokers and providers; updates requirements for life settlement contracts; updates disclosures for owners of policies and insurers; updates reporting requirements under which providers and brokers must provide information about life settlements to TDI; and provides TDI with the ability to obtain injunctions against bad actors, as well as civil penalties and cease and desist powers.

S.B. 1213 amends current law relating to consumer protections in the purchase of life settlement contracts, and imposes penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the commissioner of insurance (commissioner) in SECTION 1.01 (Sections 1111A.002, 1111A.003, 1111A.006, and 1111A.015, Insurance Code) of this bill.

Rulemaking authority previously granted to the commissioner is rescinded in SECTION 2.03 (Sections 1111.003 and 1111.004, Insurance Code) of this bill.

ANALYSIS

ARTICLE 1. LIFE SETTLEMENT CONTRACTS

SECTION 1.01. Amends Subtitle A, Title 7, Insurance Code, by adding Chapter 1111A, as follows:

CHAPTER 1111A. LIFE SETTLEMENT CONTRACTS

Sec. 1111A.001. SHORT TITLE. Provides that this Act may be cited as the Life Settlements Act.

Sec. 1111A.002. DEFINITIONS. Defines, in this chapter, "advertisement," "broker," "business of life settlements," "chronically ill," "financing entity," "financing transaction," "fraudulent life settlement act," "insured," "life expectancy," "life insurance agent," "life settlement contract," "net death benefit," "owner," "patient identifying information," "policy," "premium finance loan," "person," "provider," "purchased policy," "purchaser," "related provider trust," "settled policy," "special purpose entity," and "terminally ill."

Sec. 1111A.003. LICENSING REQUIREMENTS; EXEMPTION. (a) Prohibits a person, wherever located, from acting as a provider or broker with an owner who is a resident of this state, unless the person holds a license from the Texas Department of Insurance (TDI). Provides that if there is more than one owner on a single policy and the owners are residents of different states, the life settlement contract is 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 on in writing by all owners.

(b) Requires that an application for a provider or broker license be made to TDI by the applicant on a form prescribed by rule by the commissioner of insurance (commissioner). Requires that the application be accompanied by a fee in an amount established by the commissioner by rule. Requires that the license and renewal fees for a provider license be reasonable and prohibits the license and renewal fees for a broker license from exceeding those established for an insurance agent, as otherwise provided by this chapter.

(c) Provides that a person who has been licensed as a life insurance agent in this state or the person's home state for at least one year and is licensed as a nonresident agent in this state meets the licensing requirements of this section and is authorized to operate as a broker.

(d) Requires a life insurance agent, not later than the 30th day after the first date of operating as a broker, to notify the commissioner on a form prescribed by the commissioner that the agent is acting as a broker and to pay any applicable fee to be determined by the commissioner by rule. Requires that notification include an acknowledgement by the life insurance agent that the agent will operate as a broker in accordance with this chapter.

(e) Provides that an insurer that issued a policy that is the subject of a life settlement contract is not responsible for any act or omission of a broker or provider or purchaser arising out of or in connection with the life settlement transaction, unless the insurer receives compensation for the placement of a life settlement contract from the provider, purchaser, or broker in connection with the life settlement contract.

(f) Authorizes a person licensed as an attorney, certified public accountant, or financial planner accredited by a nationally recognized accreditation agency, who is retained to represent the owner and whose compensation is not paid directly or indirectly by the provider or purchaser, to negotiate life settlement contracts for the owner without having to obtain a license as a broker.

(g) Provides that a license expires on the second anniversary of the date of issuance. Authorizes a license holder to renew the license on payment of a renewal fee. Prohibits the renewal fee for a provider license, as specified by Subsection (b), from exceeding a reasonable fee.

(h) Requires an applicant to provide the information that the commissioner requires on forms adopted by the commissioner. Authorizes the commissioner, at any time, to require an applicant to fully disclose the identity of the applicant's stockholders that own at least 10 percent of the shares of an applicant the shares

of which are publicly traded, partners, officers and employees, and, in the exercise of the commissioner's sole discretion, to refuse to issue a license in the name of any person if the commissioner is not satisfied that an officer, an employee, a stockholder, or a partner of the applicant who may materially influence the applicant's conduct meets the standards of Sections 1111A.001 to 1111A.018.

(i) Provides that a license issued to a partnership, corporation, or other entity authorizes each member, officer, and designated employee named in the application and any supplement to the application to act as a license holder under the license.

(j) Provides that after the filing of an application and the payment of the license fee, the commissioner is required to investigate each applicant and is authorized to issue a license if the commissioner finds that the applicant:

(1) if a provider, has provided a detailed plan of operation;

(2) is competent and trustworthy and intends to transact business in good faith;

(3) has a good business reputation and has had experience, training, or education to qualify in the business for which the license is applied;

(4) if the applicant is a legal entity, is formed or organized under the laws of this state or is a foreign legal entity authorized to transact business in this state, or provides a certificate of good standing from the state of its domicile; and

(5) has provided to the commissioner an antifraud plan that meets the requirements of Section 1111A.024 and includes:

(A) a description of the procedures for detecting and investigating possible fraudulent acts and procedures for resolving material inconsistencies between medical records and insurance applications;

(B) a description of the procedures for reporting fraudulent insurance acts to the commissioner;

(C) a description of the plan for antifraud education and training of its underwriters and other personnel; and

(D) a written description or chart outlining the arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent insurance acts and the investigation of unresolved material inconsistencies between medical records and insurance applications.

(k) Prohibits the commissioner from issuing a license to a nonresident applicant unless a written designation of an agent for service of process is filed and maintained with TDI or unless the applicant has filed with TDI the applicant's written irrevocable consent that any action against the applicant may be commenced by service of process on the commissioner.

(l) Requires a license holder to file with TDI not later than March 1 of each year an annual statement containing the information as the commissioner by rule prescribes.

(m) Prohibits a provider from allowing any person to perform the functions of a broker unless the person holds a current, valid license as a broker, and as provided in this section.

(n) Prohibits a broker from allowing any person to perform the functions of a provider unless the person holds a current, valid license as a provider, and as provided in this section.

(o) Requires a provider or broker to provide to the commissioner new or revised information about officers, stockholders described by Subsection (h), partners, directors, members, or designated employees within 30 days of the change.

(p) Requires an individual licensed as a broker to complete on a biennial basis 15 hours of training related to life settlements and life settlement transactions, as required by the commissioner. Provides that a life insurance agent who is operating as a broker under this section is not subject to the requirements of this subsection.

Sec. 1111A.004. LICENSE SUSPENSION, REVOCATION, OR REFUSAL TO RENEW. (a) Authorizes the commissioner to suspend, revoke, or refuse to renew the license of a license holder if the commissioner finds that:

(1) there was a material misrepresentation in the application for the license;

(2) the license holder or an officer, partner, member, or director of the license holder has been guilty of fraudulent or dishonest practices, is subject to a final administrative action, or is otherwise shown to be untrustworthy or incompetent to act as a license holder;

(3) the license holder is a provider and demonstrates a pattern of unreasonably withholding payments to policy owners;

(4) the license holder no longer meets the requirements for initial licensure;

(5) the license holder or any officer, partner, member, or director of the license holder has been convicted of a felony, or of any misdemeanor with respect to which criminal fraud is an element, or has pleaded guilty or nolo contendere with respect to a felony or a misdemeanor with respect to which criminal fraud or moral turpitude is an element, regardless of whether a judgment of conviction has been entered by the court;

(6) the license holder is a provider and has entered into a life settlement contract that has not been approved under this chapter;

(7) the license holder is a provider and has failed to honor contractual obligations in a life settlement contract;

(8) the license holder is a provider and has assigned, transferred, or pledged a settled policy to a person other than a provider licensed in this state, a purchaser, an accredited investor or qualified institutional buyer as defined respectively in 17 C.F.R. Section 230.144A, as amended, a financing entity, a special purpose entity, or a related provider trust; or

(9) the license holder or any officer, partner, member, or key management personnel of the license holder has violated this chapter.

(b) Authorizes the commissioner to deny a license application or suspend, revoke, or refuse to renew the license of a license holder only after a hearing in accordance with Chapter 2001 (Administrative Procedure), Government Code.

Sec. 1111A.005. REQUIREMENTS FOR CONTRACT FORMS, DISCLOSURE FORMS, AND ADVERTISEMENTS. (a) Prohibits a person from using any form of life settlement contract in this state unless the form has been filed with and approved, if required, by the commissioner in a manner that conforms with the filing procedures and

any time restrictions or deeming provisions for life insurance forms, policies, and contracts.

(b) Prohibits an insurer, as a condition of responding to a request for verification of coverage or in connection with the transfer of a policy pursuant to a life settlement contract, from requiring that the owner, insured, provider, or broker sign any form, disclosure, consent, waiver, or acknowledgment that has not been expressly approved by the commissioner for use in connection with life settlement contracts.

(c) Prohibits a person from using a life settlement contract form or provide to an owner a disclosure statement form unless the form is first filed with and approved by the commissioner. Requires the commissioner to disapprove a life settlement contract form or disclosure statement form if, in the commissioner's opinion, the contract or contract provisions fail to meet the requirements of Sections 1111A.011, 1111A.012, 1111A.014, and 1111A.025(b), or are unreasonable, contrary to the interests of the public, or otherwise misleading or unfair to the owner.

(d) Authorizes the commissioner, at the commissioner's discretion, to require the submission of advertisements.

Sec. 1111A.006. REPORTING REQUIREMENTS AND PRIVACY. (a) Requires each provider, for a policy settled not later than the fifth anniversary of the date of policy issuance, to file with the commissioner not later than March 1 of each year an annual statement containing the information that the commissioner prescribes by rule. Requires that the annual statement, in addition to any other requirements, specify the total number, aggregate face amount, and life settlement proceeds of policies settled during the immediately preceding calendar year, together with a breakdown of the information by policy issue year. Requires that the annual statement also include the names of each insurance company whose policies have been settled and the brokers that have settled the policies.

(b) Provides that the information required under Subsection (a) is limited to only those transactions in which the insured is a resident of this state and may not include individual transaction data regarding the business of life settlements or information if there is a reasonable basis to find that the information could be used to identify the owner or the insured.

(c) Requires a provider that wilfully fails to file an annual statement as required in this section, or wilfully fails to reply not later than the 30th day after the date the provider receives a written inquiry from TDI about the filing of the annual statement, in addition to other penalties provided by this chapter, after notice and opportunity for hearing to be subject to a penalty of up to \$250 for each day of delay, not to exceed \$25,000 in the aggregate, for the failure to file or respond.

(d) Prohibits a provider, broker, insurance company, insurance agent, information bureau, rating agency or company, or any other person with actual knowledge of an insured's identity, except as otherwise allowed or required by law, from disclosing the identity of an insured or information that there is a reasonable basis to believe could be used to identify the insured or the insured's financial or medical information to any other person unless the disclosure is:

(1) necessary to effect a life settlement contract between the owner and a provider and the owner and insured have provided prior written consent to the disclosure;

(2) necessary to effectuate the sale of a life settlement contract, or interests in the contract, as an investment, provided the sale is conducted in accordance with applicable state and federal securities law and provided further that the owner and the insured have both provided prior written consent to the disclosure;

(3) provided in response to an investigation or examination by the commissioner or another governmental officer or agency or under Section 1111A.018;

(4) a term or condition of the transfer of a policy by one provider to another provider, in which case the receiving provider shall comply with the confidentiality requirements of this subsection;

(5) necessary to allow the provider or broker or the provider's or broker's authorized representative to make contact for the purpose of determining health status provided that in this subdivision, authorized representative does not include a person who has or may have a financial interest in the settlement contract other than a provider, licensed broker, financing entity, related provider trust, or special purpose entity and that the provider or broker requires the authorized representative to agree in writing to adhere to the privacy provisions of this chapter; or

(6) required to purchase stop loss coverage.

(e) Provides that nonpublic personal information solicited or obtained in connection with a proposed or actual life settlement contract is subject to the provisions applicable to financial institutions under the federal Gramm-Leach-Bliley Act (Pub. L. No. 106-102), and any other state and federal laws relating to confidentiality of nonpublic personal information.

Sec. 1111A.007. EXAMINATION. (a) Authorizes the commissioner, when the commissioner finds it reasonably necessary to protect the interests of the public, to examine the business and affairs of a license holder or applicant for a license. Authorizes the commissioner to order a license holder or applicant to produce any records, books, files, or other information reasonably necessary to determine whether the license holder or applicant is acting or has acted in violation of the law or otherwise contrary to the interests of the public. Requires that the expenses incurred in conducting an examination be paid by the license holder or applicant.

(b) Authorizes the commissioner, in lieu of an examination under this chapter of any foreign or alien license holder licensed in this state, at the commissioner's discretion, to accept an examination report on the license holder as prepared by the commissioner for the license holder's state of domicile or port-of-entry state.

(c) Provides that names of and individual identification data for an owner or insured is private and confidential information and is prohibited from being disclosed by the commissioner unless required by law.

(d) Requires that records of all consummated transactions and life settlement contracts be maintained by the provider until the third anniversary of the date of the death of the insured and be available to the commissioner for inspection during reasonable business hours.

(e) Requires the commissioner, if the commissioner determines that an examination should be conducted, to issue an examination warrant appointing one or more examiners to perform the examination and instructing the examiners of the scope of the examination. Provides that an examiner, in conducting the examination, is required to use methods common to the examination of a life settlement license holder and should use applicable guidelines and procedures set forth in an examiners' handbook adopted by a national organization.

(f) Requires each officer, director, and agent of a license holder or person from whom an examiner seeks information to provide to the examiners timely, convenient, and free access at all reasonable hours at the license holder's or person's offices to all books, records, accounts, papers, documents, assets, and computer or other recordings relating to the property, assets, business, and affairs

of the license holder being examined. Requires the officers, directors, employees, and agents of the license holder or person, to the extent possible, to facilitate the examination and aid in the examination. Provides that the refusal of a license holder, through an officer, a director, an employee, or an agent, to submit to examination or to comply with a reasonable written request of the commissioner is grounds for suspension or refusal of, or nonrenewal of, any license or authority held by the license holder to engage in the life settlement business or other business subject to the commissioner's jurisdiction. Requires that a proceeding for suspension, revocation, or refusal of a license or authority be conducted as provided by Subtitle B (Discipline and Enforcement), Title 2 (Texas Department of Insurance).

(g) Provides that the commissioner has the power to issue subpoenas, to administer oaths, and to examine under oath any person about any matter relevant to the examination. Authorizes the commissioner, if a person fails or refuses to obey a subpoena, to petition a court of competent jurisdiction, and authorizes the court, on proper showing, to enter an order compelling the witness to appear and testify or to produce documentary evidence.

(h) Authorizes the commissioner, when making an examination under this chapter, to retain attorneys, appraisers, independent actuaries, independent certified public accountants, or other professionals and specialists as examiners, the reasonable cost of which is required to be borne by the license holder that is the subject of the examination.

(i) Provides that nothing contained in this chapter limits the commissioner's authority to terminate or suspend an examination in order to pursue other legal or regulatory action. Provides that findings of fact and conclusions of law made in an examination are prima facie evidence in a legal or regulatory action.

(j) Requires that an examination report contain only facts appearing on the books, from the testimony concerning the affairs of an officer or agent or other person examined, and requires that the conclusions and recommendations that the examiners find be reasonably warranted from the facts.

(k) Requires the examiner in charge, not later than the 60th day after the date of the examination is complete, to file with the commissioner a verified written report of examination under oath. Requires the commissioner, on receipt of the verified report, to transmit the report to the license holder examined, together with a notice that affords the license holder a reasonable opportunity of not more than 30 days after the date of the notice to make a written submission on, or rebuttal to, any matter contained in the examination report or to request a hearing on any matter in dispute. Provides that the written submission or rebuttal is part of the report.

(l) Authorizes the commissioner, if the commissioner determines that regulatory action is appropriate as a result of an examination, to initiate any proceeding or action authorized by law.

(m) Provides that the name and individual identification data of an owner, purchaser, and insured that is obtained by TDI as a result of an examination is confidential and prohibits them from being disclosed by the commissioner, unless the disclosure is to another regulator or is required by law.

(n) Provides that, except as otherwise provided in this chapter, all preliminary and final examination reports, work papers, including license holder work papers, recorded information, and documents produced by, obtained by, or disclosed to the examiner, the commissioner, or any other person in the course of an examination under this chapter, or in the course of analysis or investigation by the commissioner of the financial condition or market conduct of a license holder are confidential and privileged, are not subject to disclosure under Chapter 552 (Public Information), Government Code, are not subject to subpoena, and are not

subject to discovery or admissible in evidence in any private civil action. Authorizes the commissioner to use the reports, papers, information, and documents in any regulatory or legal action brought as part of the commissioner's official duties. Authorizes the license holder to have access to all papers, documents, and information used to make the report.

(o) Prohibits an examiner from being appointed by the commissioner if the examiner, either directly or indirectly, has a conflict of interest or is affiliated with the management of or owns a pecuniary interest in any person subject to examination under this chapter. Provides that this section does not automatically preclude an examiner from being an owner, an insured in a life settlement contract or insurance policy, or a beneficiary in an insurance policy that is proposed for a life settlement contract.

(p) Authorizes the commissioner, notwithstanding the requirements of Subsection (o), to retain from time to time, on an individual basis, a qualified actuary, certified public accountant, or other similar individual who is independently practicing a profession, even though the person may from time to time be similarly employed or retained by a person subject to examination under this chapter.

Sec. 1111A.008. IMMUNITY FROM LIABILITY. (a) Provides that no cause of action shall arise nor shall any liability be imposed against the commissioner, the commissioner's authorized representatives, or any examiner appointed by the commissioner for a statement made or conduct performed in good faith while carrying out this chapter.

(b) Provides that no cause of action shall arise, nor shall any liability be imposed against any person for the act of communicating or delivering information to the commissioner or the commissioner's authorized representative or examiner pursuant to an examination made under this chapter, if the act of communication or delivery was performed in good faith and without fraudulent intent or the intent to deceive. Provides that this subsection does not abrogate or modify in any way any common law or statutory privilege or immunity enjoyed by any person identified in Subsection (a).

Sec. 1111A.009. INVESTIGATIVE AUTHORITY OF THE COMMISSIONER. Authorizes the commissioner to investigate a suspected fraudulent life settlement act and a person engaged in the business of life settlements.

Sec. 1111A.010. COST OF EXAMINATIONS. Provides that the reasonable and necessary cost of an examination under this chapter is to be assessed against the person being examined in accordance with Section 751.208 (Assessment of Costs of Examination).

Sec. 1111A.011. ADVERTISING. (a) Authorizes a broker or provider licensed pursuant to this chapter to conduct or participate in an advertisement in this state. Requires that the advertisement comply with all advertising and marketing laws under Chapter 541 (Unfair Methods of Competition and Unfair or Deceptive Acts or Practices) and rules adopted by the commissioner that are applicable to life insurers or to license holders under this chapter.

(b) Requires that advertisements be accurate, truthful, and not misleading in fact or by implication.

(c) Prohibits a person from:

(1) directly marketing, advertising, soliciting, or otherwise promoting the purchase of a policy for the sole purpose of or with an emphasis on settling the policy; or

(2) using the words "free," "no cost," or words of similar import in the marketing, advertising, or soliciting of, or otherwise promoting, the purchase of a policy.

Sec. 1111A.012. DISCLOSURES TO OWNERS. (a) Requires a provider to provide in writing, in a separate document that is signed by the owner and provider, the following information to the owner not later than the date the life settlement contract is signed by all parties:

(1) the fact that possible alternatives to life settlement contracts exist, including accelerated benefits offered by the issuer of the life insurance policy;

(2) the fact that some or all of the proceeds of a life settlement contract may be taxable and that assistance should be sought from a professional tax advisor;

(3) the fact that the proceeds from a life settlement contract could be subject to the claims of creditors;

(4) the fact that receipt of proceeds from a life settlement contract may adversely affect the recipients' eligibility for public assistance or other government benefits or entitlements and that advice should be obtained from the appropriate agency;

(5) the fact that the owner has a right to terminate a life settlement contract within 15 days of the date the contract is executed by all parties and the owner has received the disclosures described in this section, that rescission, if exercised by the owner, is effective only if both notice of the rescission is given and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider during the rescission period, and that if the insured dies during the rescission period, the contract is considered rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the provider;

(6) the fact that proceeds will be sent to the owner within three business days after the provider has received the insurer or group administrator's acknowledgement that ownership of the policy or interest in the certificate has been transferred and the beneficiary has been designated in accordance with the terms of the life settlement contract;

(7) the fact that entering into a life settlement contract may cause the owner to forfeit other rights or benefits, including conversion rights and waiver of premium benefits that may exist under the policy or certificate of a group policy, and that assistance should be sought from a professional financial advisor;

(8) the amount and method of calculating the compensation, including anything of value, paid or given, or to be paid or given, to the broker, or any other person acting for the owner in connection with the transaction;

(9) the date by which the funds will be available to the owner and the identity of the transmitter of the funds;

(10) the fact that the commissioner requires delivery of a buyer's guide or a similar consumer advisory package in the form prescribed by the commissioner to owners during the solicitation process;

(11) the following language: "All medical, financial, or personal information solicited or obtained by a provider or broker about an insured, including the insured's identity or the identity of family members or a

spouse or a significant other, may be disclosed as necessary to effect the life settlement contract between the owner and provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years.";

(12) the fact that the commissioner requires providers and brokers to print separate signed fraud warnings on the applications and on the life settlement contracts as follows: "Any person who knowingly presents false information in an application for insurance or a life settlement contract is guilty of a crime and may be subject to fines and confinement in prison.";

(13) the fact that the insured may be contacted by either the provider or broker or an authorized representative of the provider or broker for the purpose of determining the insured's health status or to verify the insured's address and that this contact is limited to once every three months if the insured has a life expectancy of more than one year, and not more than once per month if the insured has a life expectancy of one year or less;

(14) the affiliation, if any, between the provider and the issuer of the insurance policy to be settled;

(15) that a broker represents exclusively the owner, and not the insurer or the provider or any other person, and owes a fiduciary duty to the owner, including a duty to act according to the owner's instructions and in the best interest of the owner;

(16) the name, address, and telephone number of the provider;

(17) the name, business address, and telephone number of the independent third party escrow agent, and the fact that the owner may inspect or receive copies of the relevant escrow or trust agreements or documents; and

(18) the fact that a change of ownership could in the future limit the insured's ability to purchase future insurance on the insured's life because there is a limit to how much coverage insurers will issue on one life.

(b) Requires that the written disclosures described by Subsection (a) be conspicuously displayed in a life settlement contract furnished to the owner by a provider, including any affiliations or contractual arrangements between the provider and the broker.

(c) Requires a broker to provide the owner and the provider with at least the following disclosures not later than the date on which the life settlement contract is signed by all parties and which are required to be conspicuously displayed in the life settlement contract or in a separate document signed by the owner:

(1) the name, business address, and telephone number of the broker;

(2) a full, complete, and accurate description of all the offers, counter-offers, acceptances, and rejections relating to the proposed life settlement contract;

(3) a written disclosure of any affiliations or contractual arrangements between the broker and any person making an offer in connection with the proposed life settlement contract;

(4) the name of each broker who receives compensation and the amount of compensation, including anything of value, paid or given to the broker in connection with the life settlement contract; and

(5) a complete reconciliation of the gross offer or bid by the provider to the net amount of proceeds or value to be received by the owner.

(d) Defines, for the purpose of this section, "gross offer or bid."

(e) Provides that the failure to provide the disclosures or rights described in this section is an unfair method of competition or an unfair or deceptive act or practice described by Section 1111A.027.

Sec. 1111A.013. DISCLOSURE TO INSURER. (a) Authorizes an insurer, without limiting the ability of an insurer to assess the insurability of a policy applicant and to determine whether to issue the policy, and in addition to other questions an insurance carrier may lawfully pose to a life insurance applicant, to inquire in the application for insurance whether the proposed owner intends to pay premiums with the assistance of financing from a lender that will use the policy as collateral to support the financing.

(b) Requires that the application, if, as described in Sections 1111A.002(11) and (11-A), the loan provides funds that can be used for a purpose other than paying for the premiums, costs, and expenses associated with obtaining and maintaining the life insurance policy and loan, and notwithstanding any other law, be rejected as a violation of Section 1111A.017.

(c) Provides that if the financing does not violate Section 1111A.017 as described by Subsection (b), the insurance carrier:

(1) is authorized to make disclosures, not later than the date of the delivery of the policy, to the applicant and the insured, either on the application or on an amendment to the application that include certain statements;

(2) is authorized to require certain certifications from the applicant or the insured.

Sec. 1111A.014. GENERAL RULES. (a) Requires the provider, before entering into a life settlement contract with an owner of a policy with respect to which the insured is terminally or chronically ill, to obtain:

(1) if the owner is the insured, a written statement from a licensed attending physician that the owner is of sound mind and under no constraint or undue influence to enter into a settlement contract; and

(2) a document in which the insured consents to the release of medical records to a provider, settlement broker, or insurance agent and, if the policy was issued less than two years after the date of application for a settlement contract, to the insurance company that issued the policy.

(b) Requires an insurer to respond to a request for verification of coverage submitted by a provider, settlement broker, or life insurance agent not later than the 30th calendar day after the date the request is received. Requires that the request for verification of coverage be made on a form approved by the commissioner. Requires the insurer to complete and issue the verification of coverage or indicate in which respects the insurer is unable to respond. Requires the insurer, in the response, to indicate whether at the time of the response, based on the medical evidence and documents provided, the insurer intends to pursue an investigation about the validity of the insurance contract.

(c) Requires the provider, on or before the date of execution of the life settlement contract, to obtain a witnessed document in which the owner consents to the

settlement contract, represents that the owner has a full and complete understanding of the settlement contract and of the benefits of the policy, acknowledges that the owner is entering into the settlement contract freely and voluntarily, and, for persons with a terminal or chronic illness or condition, acknowledges that the insured has a terminal or chronic illness and that the terminal or chronic illness or condition was diagnosed after the policy was issued.

(d) Prohibits the insurer from unreasonably delaying effecting change of ownership or beneficiary with any life settlement contract lawfully entered into in this state or with a resident of this state.

(e) Provides that if a settlement broker or life insurance producer performs any of these activities required of the provider, the provider is deemed to have fulfilled the requirements of this section.

(f) Provides that if a broker performs the verification of coverage activities required of the provider, the provider is deemed to have fulfilled the requirements of Section 1111A.012.

(g) Requires the provider, not later than the 20th day after the date that an owner executes the life settlement contract, to give written notice to the insurer that issued that insurance policy that the policy has become subject to a life settlement contract. Requires that the notice be accompanied by the documents required by Section 1111A.013(c).

(h) Provides that medical information solicited or obtained by a license holder is subject to the applicable provision of state law relating to confidentiality of medical information, if not otherwise provided in this chapter.

(i) Requires that a life settlement contract entered into in this state provide that the owner is authorized to rescind the contract on or before 15 days after the date the contract is executed by all parties to the contract. Provides that rescission, if exercised by the owner, is effective only if notice of the rescission is given and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider within the rescission period. Provides that if the insured dies during the rescission period, the contract is rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the provider.

(j) Requires the provider, not later than the third business day after the date the provider receives from the owner the documents to effect the transfer of the insurance policy, to pay the proceeds of the settlement into an escrow or trust account managed by a trustee or escrow agent in a state or federally chartered financial institution pending acknowledgement of the transfer by the issuer of the policy. Requires the trustee or escrow agent to transfer to the owner the proceeds due to the owner not later than the third business day after the date the trustee or escrow officer receives from the insurer acknowledgment of the transfer of the insurance policy.

(k) Provides that failure to tender the life settlement contract proceeds to the owner on or before the date disclosed to the owner renders the contract voidable by the owner for lack of consideration until the time the proceeds are tendered to and accepted by the owner. Provides that a failure to give written notice of the right of rescission under this subsection tolls the right of rescission for 30 days after the date the written notice of the right of rescission has been given.

(l) Requires that a fee paid by a provider, an owner, or other person to a broker in exchange for services provided to the owner pertaining to a life settlement contract be computed as a percentage of the offer obtained, not the face value of the policy. Provides that nothing in this section prohibits a broker from voluntarily reducing the broker's fee to less than a percentage of the offer obtained.

(m) Requires a broker to disclose to the owner anything of value paid or given to a broker that relates to a life settlement contract.

(n) Prohibits a person, at any time prior to or at the time of the application for, or issuance of, a policy, or during a two-year period beginning on the date of issuance of the policy, from entering into a life settlement contract regardless of the date the compensation is to be provided and regardless of the date the assignment, transfer, sale, devise, bequest, or surrender of the policy is to occur. Requires that the time covered under a group policy be calculated without regard to a change in insurance carriers, provided the coverage has been continuous and under the same group sponsorship. Provides that this prohibition does not apply if:

(1) the owner certifies to the provider that the policy was issued on the owner's exercise of conversion rights arising out of a group or individual policy, provided the total of the time covered under the conversion policy plus the time covered under the prior policy is at least 24 months; or

(2) the owner submits independent evidence to the provider that one or more of the following conditions have been met during the two-year period described by this subsection:

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

(B) the owner or insured disposes of the owner's or insured's ownership interests in a closely held corporation, pursuant to the terms of a buyout or other similar agreement in effect at the time the insurance policy was initially issued;

(C) the owner's spouse dies;

(D) the owner divorces the owner's spouse;

(E) the owner retires from full-time employment;

(F) the owner becomes physically or mentally disabled and a physician determines that the disability prevents the owner from maintaining full-time employment; or

(G) a final order, judgment, or decree is entered by a court of competent jurisdiction, on the application of a creditor of the owner, adjudicating the owner bankrupt or insolvent, or approving a petition seeking reorganization of the owner or appointing a receiver, trustee, or liquidator to all or a substantial part of the owner's assets.

(o) Requires that copies of the independent evidence described by Subsection (n)(2) be submitted to the insurer at the time the provider submits a request to the insurer for verification of coverage. Requires that the copies be accompanied by a letter of attestation from the provider that the copies are true and correct copies of the documents received by the provider. Provides that this section does not prohibit an insurer from exercising its right to contest the validity of a policy.

(p) Provides that if the provider submits to the insurer a copy of independent evidence provided for Subsection (n)(2)(A) at the time the provider submits a request to the insurer to effect the transfer of the policy to the provider, the copy is deemed to establish that the settlement contract satisfies the requirements of this section.

Sec. 1111A.015. **AUTHORITY TO ADOPT RULES.** Authorizes the commissioner to adopt rules implementing this chapter and regulating the activities and relationships of providers, brokers, insurers, and their authorized representatives.

Sec. 1111A.016. **CONFLICT OF LAWS.** (a) Provides that if there is more than one owner on a single policy, and the owners are residents of different states, the life settlement contract is 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 on in writing by all of the owners. Requires that the law of the state of the insured govern in the event that equal owners fail to agree in writing on a state of residence for jurisdictional purposes.

(b) Provides that a provider licensed in this state who enters into a life settlement contract with an owner who is a resident of another state that has enacted statutes or adopted rules governing life settlement contracts is governed in the effectuation of that life settlement contract by the statutes and rules of the owner's state of residence. Requires the provider, if the state in which the owner is a resident has not enacted statutes or adopted rules governing life settlement contracts, to give the owner notice that neither state regulates the transaction on which the owner is entering. Requires the provider, for transactions in those states, however, to maintain all records required by this chapter if the transactions were executed in this state. Provides that the forms used in those states need not be approved by TDI.

(c) Requires that the laws of the state that apply to the owner, if there is a conflict in the laws that apply to an owner and a purchaser in any individual transaction, to take precedence and requires the provider to comply with those laws.

Sec. 1111A.017. **PROHIBITED PRACTICES.** (a) Prohibits a person from:

(1) entering into a life settlement contract if the person knows or should have known that the life insurance policy was obtained by means of a false, deceptive, or misleading application for the policy;

(2) engaging in a transaction, practice, or course of business if the person knows or reasonably should have known that the intent of engaging in the transaction, practice, or course of business is to avoid the notice requirements of this chapter;

(3) engaging in a fraudulent act or practice in connection with a transaction relating to any settlement involving an owner who is a resident of this state;

(4) issuing, soliciting, marketing, or otherwise promoting the purchase of an insurance policy for the sole purpose of, or with an emphasis on, settling the policy;

(5) if providing premium financing, receiving any proceeds, fee, or other consideration from the policy or owner in addition to the amounts required to pay principal, interest, and any reasonable costs or expenses incurred by the lender or borrower in connection with the premium finance agreement, except in event of a default, unless either the default on the loan or transfer of the policy occurs pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this chapter;

(6) with respect to any settlement contract or insurance policy and to a broker, knowingly soliciting an offer from, effectuating a life settlement contract with, or making a sale to any provider, financing entity, or related provider trust that is controlling, controlled by, or under common control with the broker unless the relationship is fully disclosed to the owner;

(7) with respect to any life settlement contract or insurance policy and a provider, knowingly entering into a life settlement contract with an owner if, in connection with the life settlement contract, anything of value will be paid to a broker that is controlling, controlled by, or under common control with the provider or the financing entity or related provider trust that is involved in such settlement contract, unless the relationship is fully disclosed to the owner;

(8) with respect to a provider, entering into a life settlement contract unless the life settlement promotional, advertising, and marketing materials, as may be prescribed by rule, have been filed with the commissioner, provided that in no event may any marketing materials expressly reference that the insurance is free for any period of time; or

(9) with respect to any life insurance agent, insurance company, broker, or provider, making any statement or representation to the applicant or policyholder in connection with the sale or financing of a life insurance policy to the effect that the insurance is free or without cost to the policyholder for any period of time unless provided in the policy.

(b) Provides that a violation of this section is a fraudulent life settlement act.

Sec. 1111A.018. FRAUD PREVENTION AND CONTROL. (a) Prohibits a person from committing a fraudulent life settlement act.

(b) Prohibits a person from knowingly or intentionally interfering with the enforcement of this chapter or an investigation of a suspected or actual violation of this chapter.

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

(d) Requires that a life settlement contract and an application for a life settlement contract, regardless of the form of transmission, contain certain statements.

(e) Provides that the failure to include a statement as required in Subsection (d) is not a defense in any prosecution for a fraudulent life settlement act.

Sec. 1111A.019. MANDATORY REPORTING OF FRAUDULENT LIFE SETTLEMENT ACTS. Requires a person engaged in the business of life settlements who has knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed to provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

Sec. 1111A.020. VOLUNTARY REPORTING. Authorizes any person, other than a person described by Section 1111A.019, who has knowledge or a reasonable belief that a fraudulent life settlement act is being, will be, or has been committed to provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

Sec. 1111A.021. IMMUNITY FROM LIABILITY. (a) Requires that no civil liability be imposed on and no cause of action arises from a person furnishing information about a suspected, anticipated, or completed fraudulent life settlement act or a suspected or completed fraudulent insurance act if the information is provided to or received from:

(1) the commissioner or an employee, agent, or representative of the commissioner;

(2) a federal, state, or local law enforcement or regulatory official or an employee, agent, or representative of the official;

- (3) a person involved in the prevention and detection of a fraudulent life settlement act or that person's employee, agent, or representative;
- (4) a regulatory body overseeing life insurance, life settlements, securities, or investment fraud or an employee, agent, or representative of that body;
- (5) the life insurer that issued the life insurance policy covering the life of the insured; or
- (6) the license holder and any employee, agent, or representative of the license holder.

(b) Provides that Subsection (a) does not apply to a statement made with actual malice. Requires the party bringing the action, in an action brought against a person for filing a report or furnishing other information concerning a fraudulent life settlement act or a fraudulent insurance act, to plead specifically any allegation that Subsection (a) does not apply because the person filing the report or furnishing the information did so with actual malice.

(c) Provides that this section does not abrogate or modify common law or statutory privileges or immunities enjoyed by a person described in Subsection (a).

Sec. 1111A.022. CONFIDENTIALITY. (a) Provides that the documents and evidence provided as described by Section 1111A.021 or obtained by the commissioner in an investigation of a suspected or an actual fraudulent life settlement act are privileged and confidential, are not a public record, and are not subject to discovery or subpoena in a civil or criminal action.

(b) Provides that Subsection (a) does not prohibit release by the commissioner of documents and evidence obtained in an investigation of a suspected or an actual fraudulent life settlement act:

- (1) in an administrative or judicial proceeding to enforce a provision of this code or another insurance law of this state;
- (2) to a federal, state, or local law enforcement or regulatory agency, to an organization established for the purpose of detecting and preventing a fraudulent life settlement act, or to the National Association of Insurance Commissioners; or
- (3) at the discretion of the commissioner, to a person in the business of life settlements that is aggrieved by a fraudulent life settlement act.

(c) Provides that release of documents and evidence under Subsection (b) does not abrogate or modify the privilege granted in Subsection (a).

Sec. 1111A.023. OTHER LAW ENFORCEMENT OR REGULATORY AUTHORITY. Provides that this chapter does not:

- (1) preempt the authority or relieve the duty of another law enforcement or regulatory agency to investigate, examine, and prosecute a suspected violation of law;
- (2) preempt, supersede, or limit any provision of any state securities law or any rule, order, or notice issued under the law;
- (3) prevent or prohibit a person from disclosing voluntarily information concerning life settlement fraud to a law enforcement or regulatory agency other than TDI; or

- (4) limit the powers granted by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine a possible violation of law and to take appropriate action against wrongdoers.

Sec. 1111A.024. LIFE SETTLEMENT ANTIFRAUD INITIATIVES. (a) Requires a provider or broker to implement antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent life settlement acts. Provides that at the discretion of the commissioner, the commissioner is authorized to order, or a license holder is authorized to request and the commissioner is authorized to grant, a modification of the following required initiatives as necessary to ensure an effective antifraud program. Authorizes a modification granted under this section to be more or less restrictive than the required initiatives so long as the modification may reasonably be expected to accomplish the purpose of this section. Requires that antifraud initiatives include:

- (1) fraud investigators, who may be provider or broker employees or independent contractors; and

- (2) an antifraud plan, which is required to be submitted to the commissioner and is required to include:

- (A) a description of the procedures for detecting and investigating possible fraudulent life settlement acts and procedures for resolving material inconsistencies between medical records and insurance applications;

- (B) a description of the procedures for reporting possible fraudulent life settlement acts to the commissioner;

- (C) a description of the plan for antifraud education and training of underwriters and other personnel; and

- (D) a description or chart outlining the organizational arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent life settlement acts and investigating unresolved material inconsistencies between medical records and insurance applications.

- (b) Provides that an antifraud plan submitted to the commissioner is privileged and confidential, is not subject to disclosure under Chapter 552, Government Code, and is not subject to discovery or subpoena in a civil or criminal action.

Sec. 1111A.025. INJUNCTION; CIVIL REMEDIES; CEASE AND DESIST ORDERS.

(a) Authorizes the commissioner, in addition to the penalties and other enforcement provisions of this chapter, if any person violates this chapter or any rule implementing this chapter, to seek an injunction in a court in the county where the person resides or has a principal place of business and to apply for temporary and permanent orders that the commissioner determines necessary to restrain the person from further committing the violation.

- (b) Authorizes the commissioner to issue a cease and desist order against a person who violates any provision of this chapter, any rule or order adopted by the commissioner, or any written agreement entered into with the commissioner, in accordance with Chapter 82 (Sanctions).

- (c) Authorizes the commissioner, if the commissioner finds that an action in violation of this chapter presents an immediate danger to the public and requires an immediate final order, to issue an emergency cease and desist order under Chapter 83 (Emergency Cease and Desist Orders).

- (d) Prohibits the provisions of this chapter from being waived by agreement. Authorizes no choice of law provision to prevent the application of this chapter to any settlement.

Sec. 1111A.026. PENALTIES. (a) Provides that it is a violation of this chapter for any person, provider, broker, or any other party related to the business of life settlements to commit a fraudulent life settlement act.

(b) Provides that, for criminal liability purposes, a person who commits a fraudulent life settlement act is guilty of committing insurance fraud and is required to be subject to penalties under Chapter 35 (Insurance Fraud), Penal Code.

(c) Provides that Subtitle B, Title 2, applies to a violation of this chapter.

SECTION 1.02. (a) Authorizes a provider lawfully transacting business in this state before the effective date of this Act to continue to do so pending approval or disapproval of the person's application for a license as long as the application is filed with the commissioner not later than 30 days after the date of the publication by the commissioner of an application form and instructions for licensure of providers. Provides that if the publication of the application form and instructions is before the effective date of this Act, then the filing of the application is prohibited from being later than 30 days after the effective date of this Act and the applicant is authorized to use any form of life settlement contract that has been filed with the commissioner pending approval, provided that the form is otherwise in compliance with the provisions of this Act. Requires a person transacting business in this state under this provision to comply with all other requirements of this Act.

(b) Authorizes a person who has lawfully negotiated a life settlement contract between an owner residing in this state and one or more providers for at least one year immediately before the effective date of this Act to continue to do so pending approval or disapproval of the person's application for a license provided that the application is filed with the commissioner not later than the 30th day after the date of publication by the commissioner of an application form and instructions for licensure of brokers. Provides that if the publication of the application form and instructions is before the effective date of this Act, then the filing of the application is prohibited from being later than the 30th day after the effective date of this Act. Requires any person transacting business in this state under this provision to comply with all other requirements of this Act.

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01. Amends the heading to Chapter 1111, Insurance Code, to read as follows:

CHAPTER 1111. ACCELERATED TERM LIFE INSURANCE BENEFITS

SECTION 2.02. Amends Section 1551.255(a), Insurance Code, to redefine, in this section, "viatical settlement."

SECTION 2.03. Repealer: Subchapter A (Life and Viatical Settlements), Chapter 1111, Insurance Code.

ARTICLE 3. EFFECTIVE DATE

SECTION 3.01. Effective date: September 1, 2011.

EFFECTIVE DATE

Effective date: September 1, 2011.