

## **BILL ANALYSIS**

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S.B. 1213  
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### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

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 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 (NCOIL), to address issues in connection with schemes involving stranger-originated life insurance (STOLI). STOLI gives ownership or control of a life insurance policy, at the time of the creation of the policy, to a party lacking an insurable interest in the insured whose life is the subject of the policy. STOLI schemes involve pre-arranged sales of insurance prior to issuance of a policy; and include known premium finance and trust schemes that, pursuant to agreements relating to those transactions, take away a lawful owner's control of the policy or death benefits.

S.B. 1213 defines and prohibits the manufacturing of new life insurance policies in violation of insurable interest laws, updating the definition of life settlements to prohibit illegitimate uses of trusts to hide STOLI type schemes and prohibiting illegitimate premium financing schemes in the manufacturing of life insurance policies. The bill also gives insurance companies greater authority to protect themselves against such schemes. This model legislation has been adopted in as many as 20 states since 2007.

S.B. 1214 also contains the NCOIL Life Insurance Consumer Disclosure Model Act, adopted in November 2010. These provisions provide seniors and others who are faced with the termination of their life insurance policy a short explanation of their "rights and options" prior to the lapse or surrender of the policy. The bill additionally amends the reporting requirements for life settlement providers to comply with those of other states in order to better protect information about consumers who enter into agreements with life settlement companies.

As proposed, S.B. 1213 amends current law relating to the regulation of certain transactions related to life insurance and related products; providing penalties.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to commissioner of insurance in SECTION 1 (Section 525.003, Insurance Code) and SECTION 10 (Section 1111.009, Insurance Code) of this bill.

Rulemaking authority previously granted to the commissioner of insurance is modified in SECTION 7 (Section 1111.003, Insurance Code) of this bill.

## **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subtitle B, Title 5, Insurance Code, by adding Chapter 525, as follows:

### CHAPTER 525. LIFE INSURANCE CONSUMER DISCLOSURE ACT

Sec. 525.001. SHORT TITLE. Provides that this Act may be cited as the Life Insurance Consumer Disclosure Act.

Sec. 525.002. DEFINITIONS. Defines "insured," "insurer," "person," "policy," and "policy owner" in this section.

Sec. 525.003. NOTICE TO POLICY OWNER REQUIRED. (a) Requires an insurer to provide the written notice required by Subsection (b) to a policy owner if the insured is at least 60 years old or if the insurer has actual knowledge that the insured is terminally or chronically ill, and if:

- (1) the policy owner requests the surrender, wholly or partly, of a policy; or an accelerated death benefit under a policy;
- (2) the insurer sends notice to the policy owner that the policy may lapse; or
- (3) another circumstance occurs and the commissioner of insurance (commissioner) has prescribed by rule that an insurer is required to send the notice under this chapter in that circumstance.

(b) Requires the commissioner by rule to adopt or approve forms to be used for notices under this chapter to inform a policy owner of:

- (1) alternatives to the lapse or surrender of a policy; and
- (2) the policy owner's rights related to the disposition of a policy.

(c) Requires that the written notice be developed at no cost to insurers or other license holders and be written in simple, nontechnical language.

(d) Requires that the written notice contain:

- (1) a statement explaining that life insurance is a critical part of a broader financial plan;
- (2) a statement explaining that there are alternatives to the lapse or surrender of a policy;
- (3) a general description of the following alternatives to the lapse or surrender of a policy:
  - (A) accelerated death benefits available under the policy or as a rider to the policy;
  - (B) the assignment of the policy as a gift;
  - (C) the sale of the policy under a life settlement contract, including a life settlement under Chapter 1111;
  - (D) the replacement of the policy under Chapter 1114 (Replacement of Certain Life Insurance Policies and Annuities);

(E) the maintenance of the policy under the terms of the policy or a rider to the policy or through a life settlement contract;

(F) the maintenance of the policy through a loan issued by an insurer or a third party, using the policy or the cash surrender value of the policy as collateral for the loan;

(G) conversion of the policy from a term policy to a permanent policy; and

(H) conversion of the policy to obtain long-term care health insurance coverage or a long-term care benefit plan; and

(4) a statement explaining that life insurance, life settlements, or other alternatives to the lapse or surrender of the policy described in the notice may be available to a particular policy owner depending on a number of circumstances, including the age and health status of the insured or the terms of a life insurance policy, and that policy owners should contact their financial advisor, insurance agent, broker, or attorney to obtain further advice and assistance.

Sec. 525.004. PENALTIES. Provides that a violation of Section 525.003(a) is an unfair or deceptive act or practice in the business of insurance subject to sanctions and penalties under Chapter 541 (Unfair Methods of Competition and Unfair or Deceptive Acts or Practices).

SECTION 2. Amends the heading to Chapter 1111, Insurance Code, to read as follows:

CHAPTER 1111. LIFE SETTLEMENT CONTRACTS, VIATICAL SETTLEMENTS, AND CERTAIN RELATED PRACTICES; ACCELERATED TERM LIFE INSURANCE BENEFITS

SECTION 3. Amends the heading to Subchapter A, Chapter 1111, Insurance Code, to read as follows:

SUBCHAPTER A. LIFE SETTLEMENT CONTRACTS AND VIATICAL SETTLEMENTS

SECTION 4. Amends Section 1111.001, Insurance Code, by adding Subsections (2-a), (2-b), (2-c), (2-d), and (2-e) to define, respectively, "premium finance loan," "provider," "purchaser," "related provider trust," and "special purpose entity."

SECTION 5. Amends Subchapter A, Chapter 1111, Insurance Code, by adding Sections 1111.0011, 1111.0012, and 1111.0013, as follows:

Sec. 1111.0011. LIFE SETTLEMENT CONTRACT. (a) Defines, for purposes of this subchapter, "life settlement contract."

(b) Provides that the term includes the transfer for compensation or value of ownership or a beneficial interest in a trust or other entity that owns the policy if the trust or other entity was formed or availed of for the principal purpose of acquiring one or more life insurance contracts owned by a person residing in this state; and a premium finance loan made for a policy on or before the date of issuance of the policy if the loan proceeds are not used solely to pay the policy premiums, and any costs or expenses incurred by the lender or borrower in connection with the financing; the owner receives on the date of the premium finance loan a guarantee of the future life settlement value of the policy; or the owner agrees on the date of the premium finance loan to sell the policy or any portion of the death benefit of the policy on any date following the issuance of the policy.

(c) Provides that the term does not include:

(1) a policy loan made by a life insurer under the terms of a life insurance policy or accelerated death provisions contained in the life insurance policy, whether issued with the original policy or as a rider;

(2) a premium finance loan, or any loan made by a bank or other licensed financial institution, if default on the loan or the transfer of the policy in connection with such a default is not in accordance with an agreement or understanding with any other person entered into for the purpose of evading regulation under this subchapter;

(3) a collateral assignment of a life insurance policy made by an owner:

(4) a loan made by a lender that does not violate Chapter 651 (Financing of Insurance Premiums), if the loan does not qualify as a life settlement contract under Subsection (a) or (b);

(5) an agreement in which each of the parties is closely related to the insured by consanguinity or affinity; or otherwise has a lawful substantial economic interest in the continued life, health, and bodily safety of the insured; or that is a trust established primarily for the benefit of a party described by Paragraph (A);

(6) any designation, consent, or agreement by an insured who is an employee of an employer in connection with the purchase by the employer, or a trust established by the employer, of life insurance on the life of the employee;

(7) a bona fide business succession planning arrangement between one or more shareholders in a corporation or between a corporation and one or more of its shareholders or one or more trusts established by its shareholders between one or more partners in a partnership or between a partnership and one or more of its partners or one or more trusts established by its partners; or between one or more members in a limited liability company or between a limited liability company and one or more of its members or one or more trusts established by its members;

(8) an agreement entered into by a service recipient, or a trust established by the service recipient, and a service provider, or a trust established by the service provider, who performs significant services for the service recipient's trade or business; or

(9) any other contract, transaction, or arrangement that the commissioner determines is not of the type intended to be regulated by this subchapter.

Sec. 1111.0012. OWNER. (a) Defines, in this subchapter, "owner."

(b) Provides that the term does not include a registered provider or any other person licensed under this code while operating under this subchapter; a qualified institutional buyer, as defined by Securities and Exchange Commission Rule 144A (17 C.F.R. Section 230.144A) under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.); a financing entity; a special purpose entity; or a related provider trust.

Sec. 1111.0013. STRANGER-ORIGINATED LIFE INSURANCE. (a) Prohibits a person from procuring a new insurance policy covering the life of an insured if the person lacks an insurable interest in the insured, and at the inception of the policy, owns or controls the policy or the majority of the policy's death benefits.

(b) Provides that this section does not apply to the lawful assignment of a life insurance policy, including a life settlement contract or a viatical settlement, or a practice described by Section 1111.0011(c).

(c) Provides that for purposes of Chapter 701 (Insurance Fraud Investigations) an act that violates this section constitutes a fraudulent insurance act.

SECTION 6. Amends Section 1111.002, Insurance Code, as follows:

Sec. 1111.002. PURPOSE. Provides that the purpose of this subchapter is to provide for registration of persons engaged in the business of life settlement contracts or viatical settlements; and provide consumer protection for a person who may sell or otherwise transfer the person's life insurance policy.

SECTION 7. Amends Section 1111.003, Insurance Code, as follows:

Sec. 1111.003. RULES; REGISTRATION AND REGULATION. (a) Requires the commissioner, to implement this subchapter, to adopt reasonable rules relating to life settlement contracts, rather than life settlements, and relating to viatical settlements.

(b) Requires that the rules adopted by the commissioner under this section must include rules governing:

(1) registration of providers, rather than registration of a person engaged in the business of life settlements;

(2) registration of persons, rather than a person, engaged in the business of viatical settlements;

(3) approval of contract forms;

(4) disclosure requirements;

(5) prohibited practices relating to an unfair discrimination regarding life settlement contracts or in the provision of viatical settlements, rather than unfair discrimination in the provision of life or viatical settlements; and referral fees paid by providers and persons engaged in the business of viatical settlements, rather than life or viatical settlements;

(6) assignment or resale of life insurance policies;

(7) maintenance of appropriate confidentiality of personal and medical information; and

(8) the responsibility of a registrant to ensure compliance with this subchapter and rules relating to life settlement contracts or viatical settlements after the registration is revoked, suspended, or otherwise lapses.

Makes a conforming change.

(c) Prohibits the commissioner from adopting a rule establishing a price or fee for the sale or purchase of a life settlement under a life settlement contract.

(d) Prohibits the commissioner from adopting a rule that regulates the actions of an investor providing money to a provider or a viatical settlement company, rather than to a life or viatical settlement company.

SECTION 8. Amends Section 1111.005(a), Insurance Code, as follows:

(a) Authorizes the commissioner to suspend or revoke a registration or deny an application for registration if the commissioner determines that the registrant or applicant, individually, or through any officer, director, or shareholder of the registrant or applicant, among certain actions, misappropriated, converted to the registrant's or applicant's own use, or illegally withheld money belonging to a party to a life settlement contract or viatical settlement.

SECTION 9. Amends Section 1111.006, Insurance Code, as follows:

Sec. 1111.006. **APPLICABILITY OF OTHER INSURANCE LAWS.** Sets forth certain enumerated laws that apply to a provider or a person engaged in the business of viatical settlements, rather than the business of life or viatical settlements. Makes a conforming change.

SECTION 10. Amends Subchapter A, Chapter 1111, Insurance Code, by adding Sections 1111.007, 1111.008, and 1111.009, as follows:

Sec. 1111.007. **DISCLOSURE TO INSURER.** (a) Authorizes an insurer, in addition to other questions an insurer may lawfully pose to an applicant for life insurance, to inquire in the application for insurance whether the proposed owner intends to pay premiums with the assistance of financing from a lender who will use the policy as collateral for a premium finance loan used to support the financing.

(b) Authorizes that an application, if the premium finance 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, be rejected as a prohibited practice.

(c) Prohibits an insurer, if the financing does not violate Subsection (b) or the insurer's lawful underwriting guidelines, from rejecting the application solely because the premiums will be financed. Authorizes the insurer to make disclosures to the applicant, on either the application or an amendment to the application, to be completed not later than the date the policy is delivered. Sets forth authorized policy disclosure language.

(d) Authorizes the insurer to also require certifications from the applicant for insurance coverage or the insured. Sets forth authorized policy certification language.

Sec. 1111.008. **GENERAL REQUIREMENTS REGARDING LIFE SETTLEMENT CONTRACTS.** (a) Prohibits a person, effective September 1, 2011, from entering into a life settlement contract during any period before or on the date of the application for or the issuance of an insurance policy, or during a period before the second anniversary of issuance of the policy, regardless of the date the compensation is to be provided; or the assignment, transfer, sale, devise, bequest, or surrender of the policy is to occur.

(b) Provides that the prohibition does under Subsection (a) does not apply if the owner certifies to the provider that:

(1) the policy was issued on the owner's exercise of conversion rights arising out of a group or individual policy, if the total time covered under the conversion policy plus the time covered under the prior policy is at least 24 months, and the time covered under a group policy is computed without regard to a change in insurers if the coverage has been continuous and under the same group sponsorship; or

(2) the owner submits independent evidence to the provider that one or more of the following conditions have been met within the 24-month period:

- (A) the owner or insured is terminally or chronically ill;
- (B) the owner or insured disposes of the ownership interests in a closely held corporation under 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 his or her 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) on the application of a creditor of the owner, a final order, judgment, or decree is entered by a court of competent jurisdiction adjudicating the owner bankrupt or insolvent; 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.

(c) Requires that copies of the independent evidence required by Subsection (b)(2) be submitted to the insurer when the provider submits a request to the insurer for verification of the coverage. Requires that the copies be accompanied by a letter from the provider attesting that the copies are true and correct copies of the documents received by the provider. Provides that nothing in this subsection affects the right of an insurer to contest the validity of any insurance policy.

(d) Provides that if the provider submits to the insurer a copy of independent evidence under Subsection (b)(2) on submission of a request to the insurer to the effect the transfer of the policy to the provider, the copy is deemed to establish that the life settlement contract satisfies the requirements of this section.

Sec. 1111.009. REPORTING REQUIREMENTS AND PRIVACY. (a) Requires each registered provider to file with the commissioner on or before March 1 of each year an annual statement containing the information the commissioner prescribes by rule.

(b) Requires that the annual statement required under Subsection (a), in addition to any other information required by commissioner rule, specify:

(1) the total number, aggregated face amount, and life settlement proceeds of insurance policies settled during the immediately preceding calendar year; and

(2) a breakdown of the information described by Subdivision (1) by policy issue year.

(c) Provides that the information required under Subsection (b) is limited to transactions in which the owner is a resident of this state and does not include:

(1) individual transaction information regarding the business of life settlements; or

(2) information that reasonably could be used to identify the owner or the insured.

(d) Provides that each provider who wilfully fails to file the annual statement required by this section, or who wilfully fails to reply not later than the 30th day after the date of a written inquiry by the Texas Department of Insurance in connection with the annual statement, is subject, after notice and an opportunity for a hearing, to an administrative penalty of up to \$250 per day of delay, not to exceed \$25,000 in the aggregate, for each failure. Provides that a penalty imposed under this subsection is in addition to other penalties provided by this chapter.

(e) Prohibits, a provider, broker, insurer, agent, information bureau, or rating agency or company, or any other person with actual knowledge of an insured's identity, except as otherwise provided, from disclosing the identity of an insured, or information that reasonably could be used to identify the insured or the insured's financial or medical information, to any other person unless the disclosure:

(1) is 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) is necessary to effect the sale of life settlement contracts, or interests in those contracts, as investments, if the sale is conducted in accordance with applicable state and federal securities laws, and the owner and the insured have both provided prior written consent to the disclosure;

(3) is provided in response to an investigation or examination by the commissioner or any other governmental officer or agency, or under the investigation of fraud requirements of Subtitle F (Insurance Fraud and Identity Theft), Title 5 (Protection of Consumer Interest);

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

(5) is necessary to allow the provider or broker or their authorized representatives to make contacts for the purpose of determining health status; or

(6) is required to purchase stop loss coverage.

(f) Provides that for purposes of Subsection (e)(5), the term "authorized representative" does not include certain persons. Requires a provider or broker to require its authorized representative to agree in writing to adhere to the privacy provisions of this subchapter.

(g) 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 the financial institutions under 15 U.S.C Section 6801 et seq. and all other state and federal laws relating to confidentiality of nonpublic personal information.

SECTION 11. Repealer: Section 1111.0001(1) (defining "life settlement"), Insurance Code.

SECTION 12. Requires the commissioner to adopt all rules necessary to implement Chapter 1111, Insurance Code, as amended by this Act, not later than March 1, 2012.

SECTION 13. Provides that an insurer is not required to provide a notice under Chapter 525, Insurance Code, as added by this Act, before September 1, 2011.



SECTION 14. Provides that this Act applies only to a life settlement contract entered into or renewed on or after January 1, 2012. Provides that a life settlement contract entered into or renewed before January 1, 2012, is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

SECTION 15. Effective date: September 1, 2011.