

1 AN ACT

2 relating to life settlements and the sale, exchange, or replacement  
3 of life insurance and annuity contracts.

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

5 SECTION 1. Section 541.058(b), Insurance Code, is amended  
6 to read as follows:

7 (b) It is not a rebate or discrimination prohibited by  
8 Section 541.056(a) or 541.057:

9 (1) for a life insurance or life annuity contract, to  
10 pay a bonus to a policyholder or otherwise abate the policyholder's  
11 premiums in whole or in part out of surplus accumulated from  
12 nonparticipating insurance policies if the bonus or abatement:

13 (A) is fair and equitable to policyholders; and

14 (B) is in the best interests of the insurer and  
15 its policyholders;

16 (2) for a life insurance policy issued on the  
17 industrial debit plan, to make to a policyholder who has  
18 continuously for a specified period made premium payments directly  
19 to the insurer's office an allowance in an amount that fairly  
20 represents the saving in collection expenses;

21 (3) for a group insurance policy, to readjust the rate  
22 of premium based on the loss or expense experience under the policy  
23 at the end of a policy year if the adjustment is retroactive for  
24 only that policy year;



1 SECTION 3. Subtitle A, Title 7, Insurance Code, is amended  
2 by adding Chapter 1111A to read as follows:

3 CHAPTER 1111A. LIFE SETTLEMENT CONTRACTS

4 Sec. 1111A.001. SHORT TITLE. This Act may be cited as the  
5 Life Settlements Act.

6 Sec. 1111A.002. DEFINITIONS. In this chapter:

7 (1) "Advertisement" means a written, electronic, or  
8 printed communication or a communication by means of a recorded  
9 telephone message or transmitted on radio, television, the  
10 Internet, or similar communications media, including film strips,  
11 motion pictures, and videos, published, disseminated, circulated,  
12 or placed directly before the public for the purpose of creating an  
13 interest in or inducing a person to purchase or sell, assign,  
14 devise, bequest, or transfer the death benefit or ownership of a  
15 life insurance policy or an interest in a life insurance policy  
16 under a life settlement contract.

17 (2) "Broker" means a person who, on behalf of an owner  
18 and for a fee, commission, or other valuable consideration, offers  
19 or attempts to negotiate a life settlement contract between an  
20 owner and a provider or estimates life expectancies for a life  
21 settlement contract. A broker who offers or attempts to negotiate a  
22 life settlement contract represents only the owner and owes a  
23 fiduciary duty to the owner to act according to the owner's  
24 instructions, and in the best interest of the owner,  
25 notwithstanding the manner in which the broker is compensated. A  
26 broker does not include an attorney, certified public accountant,  
27 or financial planner retained in the type of practice customarily

1 performed in a professional capacity to represent the owner whose  
2 compensation is not paid directly or indirectly by the provider or  
3 any other person, except the owner.

4 (3) "Business of life settlements" means an activity  
5 involved in, but not limited to, offering to enter into,  
6 soliciting, negotiating, procuring, effectuating, monitoring, or  
7 tracking, of life settlement contracts.

8 (4) "Chronically ill" means:

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

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

15 (C) having a level of disability similar to that  
16 described in Paragraph (A) as determined under rules adopted by the  
17 commissioner after consideration of any applicable regulation,  
18 guideline, or determination of the United States Secretary of  
19 Health and Human Services.

20 (5) "Financing entity" means an underwriter,  
21 placement agent, lender, purchaser of securities, purchaser of a  
22 policy or certificate from a provider, credit enhancer, or any  
23 entity that has a direct ownership in a policy or certificate that  
24 is the subject of a life settlement contract whose principal  
25 activity related to the transaction is providing funds to effect  
26 the life settlement contract or purchase of a policy, and who has an  
27 agreement in writing with a provider to finance the acquisition of a

1 life settlement contract. The term does not include a  
2 non-accredited investor or purchaser.

3 (6) "Financing transaction" means a transaction in  
4 which a licensed provider obtains financing from a financing entity  
5 including secured or unsecured financing, a securitization  
6 transaction, or a securities offering that is either registered or  
7 exempt from registration under federal and state securities law.

8 (7) "Fraudulent life settlement act" includes:

9 (A) an act or omission committed by a person who,  
10 knowingly and with intent to defraud, for the purpose of depriving  
11 another of property or for pecuniary gain, commits, or permits an  
12 employee or an agent to engage in, acts including:

13 (i) presenting, causing to be presented, or  
14 preparing with knowledge and belief that it will be presented to or  
15 by a provider, premium finance lender, broker, insurer, insurance  
16 agent, or any other person, false material information, or  
17 concealing material information, as part of, in support of, or  
18 concerning a fact material to one or more of the following:

19 (a) an application for the issuance of  
20 a life settlement contract or an insurance policy;

21 (b) the underwriting of a life  
22 settlement contract or an insurance policy;

23 (c) a claim for payment or benefit  
24 pursuant to a life settlement contract or an insurance policy;

25 (d) premium paid on an insurance  
26 policy;

27 (e) payment for and changes in

1 ownership or beneficiary made in accordance with the terms of a life  
2 settlement contract or an insurance policy;

3 (f) the reinstatement or conversion  
4 of an insurance policy;

5 (g) in the solicitation, offer to  
6 enter into, or effectuation of a life settlement contract, or an  
7 insurance policy;

8 (h) the issuance of written evidence  
9 of life settlement contracts or insurance; or

10 (i) an application for or the  
11 existence of or any payment related to a loan secured directly or  
12 indirectly by an interest in a life insurance policy;

13 (ii) failing to disclose to the insurer, if  
14 the insurer has requested the disclosure, that the prospective  
15 insured has undergone a life expectancy evaluation by any person or  
16 entity other than the insurer or its authorized representatives in  
17 connection with the issuance of the policy; or

18 (iii) employing a device, scheme, or  
19 artifice to defraud in the business of life settlements; and

20 (B) acts or omissions in the furtherance of a  
21 fraud or to prevent the detection of a fraud, or acts or omissions  
22 that permit an employee or an agent to:

23 (i) remove, conceal, alter, destroy, or  
24 sequester from the commissioner the assets or records of a license  
25 holder or another person engaged in the business of life  
26 settlements;

27 (ii) misrepresent or conceal the financial

1 condition of a license holder, financing entity, insurer, or other  
2 person;

3 (iii) transact the business of life  
4 settlements in violation of laws requiring a license, certificate  
5 of authority, or other legal authority for the transaction of the  
6 business of life settlements;

7 (iv) file with the commissioner or the  
8 chief insurance regulatory official of another jurisdiction a  
9 document containing false information or concealing information  
10 about a material fact;

11 (v) engage in embezzlement, theft,  
12 misappropriation, or conversion of monies, funds, premiums,  
13 credits, or other property of a provider, insurer, insured, owner,  
14 insurance policy owner, or any other person engaged in the business  
15 of life settlements or insurance;

16 (vi) knowingly and with intent to defraud,  
17 enter into, broker, or otherwise deal in a life settlement  
18 contract, the subject of which is a life insurance policy that was  
19 obtained by presenting false information concerning any fact  
20 material to the policy or by concealing that fact, for the purpose  
21 of misleading another, or providing information concerning any fact  
22 material to the policy, if the owner or the owner's agent intended  
23 to defraud the policy's issuer;

24 (vii) attempt to commit, assist, aid or  
25 abet in the commission of, or engage in conspiracy to commit the  
26 acts or omissions specified in this paragraph; or

27 (viii) misrepresent the state of residence

1 of an owner to be a state or jurisdiction that does not have a law  
2 substantially similar to this chapter for the purpose of evading or  
3 avoiding the provisions of this chapter.

4 (8) "Insured" means a person covered under the policy  
5 being considered for sale in a life settlement contract.

6 (9) "Life expectancy" means the arithmetic mean of the  
7 number of months the insured under the life insurance policy to be  
8 settled can be expected to live as determined by a life expectancy  
9 company or provider considering medical records and appropriate  
10 experiential data.

11 (10) "Life insurance agent" means a person licensed in  
12 this state as a resident or nonresident insurance agent who has  
13 received qualification or authority to write life insurance  
14 coverage under this code.

15 (11) "Life settlement contract" means a written  
16 agreement entered into between a provider and an owner establishing  
17 the terms under which compensation or anything of value will be paid  
18 and is less than the expected death benefit of the insurance policy  
19 or certificate, in return for the owner's assignment, transfer,  
20 sale, devise, or bequest of the death benefit or a portion of an  
21 insurance policy or certificate of insurance for compensation;  
22 provided, however, that the minimum value for a life settlement  
23 contract must be greater than a cash surrender value or accelerated  
24 death benefit available at the time of an application for a life  
25 settlement contract. The term also includes the transfer for  
26 compensation or value of ownership or beneficial interest in a  
27 trust or other entity that owns the policy if the trust or other



1 entity was formed or used for the principal purpose of acquiring one  
2 or more life insurance contracts that insure the life of an  
3 individual residing in this state. The term also includes:

4 (A) a written agreement for a loan or other  
5 lending transaction, secured primarily by an individual or group  
6 life insurance policy; and

7 (B) a premium finance loan made for a policy on or  
8 before the date of issuance of the policy if:

9 (i) the loan proceeds are not used solely to  
10 pay premiums for the policy and any costs or expenses incurred by  
11 the lender or the borrower in connection with the financing;

12 (ii) the owner receives on the date of the  
13 premium finance loan a guarantee of the future life settlement  
14 value of the policy; or

15 (iii) the owner agrees on the date of the  
16 premium finance loan to sell the policy or any portion of its death  
17 benefit on a date following the issuance of the policy.

18 (11-A) "Life settlement contract" does not include:

19 (A) a policy loan by a life insurance company  
20 under the terms of a life insurance policy or accelerated death  
21 provision contained in the life insurance policy, whether issued  
22 with the original policy or as a rider;

23 (B) a premium finance loan or any loan made by a  
24 bank or other licensed financial institution, provided that neither  
25 default on the loan nor the transfer of the policy in connection  
26 with the default is under an agreement or understanding with any  
27 other person for the purpose of evading regulation under this

1 chapter;

2 (C) a collateral assignment of a life insurance  
3 policy by an owner;

4 (D) a loan made by a lender that does not violate  
5 Chapter 651, provided that the loan is not described in Subdivision  
6 (11) and is not otherwise within the definition of life settlement  
7 contract;

8 (E) an agreement with respect to which all the  
9 parties are closely related to the insured by blood or law or have a  
10 lawful substantial economic interest in the continued life, health,  
11 and bodily safety of the person insured, or are trusts established  
12 primarily for the benefit of the parties;

13 (F) a designation, consent, or agreement by an  
14 insured who is an employee of an employer in connection with the  
15 purchase by the employer, or trust established by the employer, of  
16 life insurance on the life of the employee;

17 (G) a bona fide business succession planning  
18 arrangement:

19 (i) between one or more shareholders in a  
20 corporation or between a corporation and one or more of its  
21 shareholders or one or more trusts established by its shareholders;

22 (ii) between one or more partners in a  
23 partnership or between a partnership and one or more of its partners  
24 or one or more trusts established by its partners; or

25 (iii) between one or more members in a  
26 limited liability company or between a limited liability company  
27 and one or more of its members or one or more trusts established by

1 its members;

2 (H) an agreement entered into by a service  
3 recipient, or a trust established by the service recipient, and a  
4 service provider, or a trust established by the service provider,  
5 who performs significant services for the service recipient's trade  
6 or business; or

7 (I) any other contract, transaction, or  
8 arrangement from the definition of life settlement contract that  
9 the commissioner determines is not of the type intended to be  
10 regulated by this chapter.

11 (12) "Net death benefit" means the amount of the life  
12 insurance policy or certificate to be settled less any outstanding  
13 debts or liens.

14 (13) "Owner" means the owner of a life insurance  
15 policy or a certificate holder under a group policy, with or without  
16 a terminal illness, who enters or seeks to enter into a life  
17 settlement contract. In this chapter, the term "owner" is not  
18 limited to an owner of a life insurance policy or a certificate  
19 holder under a group policy that insures the life of an individual  
20 with a terminal or chronic illness or condition except as  
21 specifically provided. The term does not include:

22 (A) a provider or other license holder under this  
23 chapter;

24 (B) a qualified institutional buyer as defined by  
25 17 C.F.R. Section 230.144A, as amended;

26 (C) a financing entity;

27 (D) a special purpose entity; or

1                   (E) a related provider trust.

2                   (14) "Patient identifying information" means an  
3 insured's address, telephone number, facsimile number, e-mail  
4 address, photograph or likeness, employer, employment status,  
5 social security number, or any other information that is likely to  
6 lead to the identification of the insured.

7                   (15) "Policy" means an individual or group policy,  
8 group certificate, contract, or arrangement of life insurance owned  
9 by a resident of this state, regardless of whether delivered or  
10 issued for delivery in this state.

11                   (16) "Premium finance loan" is a loan made primarily  
12 for the purposes of making premium payments on a life insurance  
13 policy that is secured by an interest in the life insurance policy.

14                   (17) "Person" means an individual or legal entity,  
15 including a partnership, limited liability company, association,  
16 trust, or corporation.

17                   (18) "Provider" means a person, other than an owner,  
18 who enters into or effectuates a life settlement contract with an  
19 owner. The term does not include:

20                   (A) a bank, savings bank, savings and loan  
21 association, or credit union;

22                   (B) a licensed lending institution or creditor or  
23 secured party pursuant to a premium finance loan agreement that  
24 takes an assignment of a life insurance policy or certificate  
25 issued pursuant to a group life insurance policy as collateral for a  
26 loan;

27                   (C) the insurer of a life insurance policy or

1 rider to the extent of providing accelerated death benefits or  
2 riders under Subchapter B, Chapter 1111, or cash surrender value;

3 (D) an individual who enters into or effectuates  
4 not more than one agreement in a calendar year for the transfer of a  
5 life insurance policy or certificate issued pursuant to a group  
6 life insurance policy, for compensation or anything of value less  
7 than the expected death benefit payable under the policy;

8 (E) a purchaser;

9 (F) any authorized or eligible insurer that  
10 provides stop loss coverage to a provider, purchaser, financing  
11 entity, special purpose entity, or related provider trust;

12 (G) a financing entity;

13 (H) a special purpose entity;

14 (I) a related provider trust;

15 (J) a broker; or

16 (K) an accredited investor or qualified  
17 institutional buyer as those terms are defined by 17 C.F.R.  
18 Sections 230.501 and 230.144A, respectively, as amended, who  
19 purchases a life settlement policy from a provider.

20 (19) "Purchased policy" means a policy or group  
21 certificate that has been acquired by a provider pursuant to a life  
22 settlement contract.

23 (20) "Purchaser" means a person who pays compensation  
24 or anything of value as consideration for a beneficial interest in a  
25 trust that is vested with, or for the assignment, transfer, or sale  
26 of, an ownership or other interest in a life insurance policy or a  
27 certificate issued pursuant to a group life insurance policy that

1 has been the subject of a life settlement contract.

2 (21) "Related provider trust" means a titling trust or  
3 other trust established by a licensed provider or a financing  
4 entity for the sole purpose of holding the ownership or beneficial  
5 interest in purchased policies in connection with a financing  
6 transaction. In order to qualify as a related provider trust, the  
7 trust must have a written agreement with the licensed provider  
8 under which the licensed provider is responsible for ensuring  
9 compliance with all statutory and regulatory requirements and under  
10 which the trust agrees to make all records and files relating to  
11 life settlement transactions available to the department as if  
12 those records and files were maintained directly by the licensed  
13 provider.

14 (22) "Settled policy" means a life insurance policy or  
15 certificate that has been acquired by a provider pursuant to a life  
16 settlement contract.

17 (23) "Special purpose entity" means a corporation,  
18 partnership, trust, limited liability company, or other legal  
19 entity formed solely to provide either directly or indirectly  
20 access to institutional capital markets:

21 (A) for a financing entity or provider; or

22 (B) in connection with a transaction in which:

23 (i) the securities in the special purpose  
24 entity are acquired by the owner or by a qualified institutional  
25 buyer as defined by 17 C.F.R. Section 230.144A, as amended; or

26 (ii) the securities pay a fixed rate of  
27 return commensurate with established asset-backed institutional

1 capital markets.

2 (24) "Terminally ill" means having an illness or  
3 sickness that can reasonably be expected to result in death not  
4 later than 24 months after the date of diagnosis.

5 Sec. 1111A.003. LICENSING REQUIREMENTS; EXEMPTION. (a) A  
6 person, wherever located, may not act as a provider or broker with  
7 an owner who is a resident of this state, unless the person holds a  
8 license from the department.

9 (b) An application for a provider or broker license must be  
10 made to the department by the applicant on a form prescribed by the  
11 commissioner. The application must be accompanied by a fee in an  
12 amount established by the commissioner by rule. The license and  
13 renewal fees for a provider license must be reasonable and the  
14 license and renewal fees for a broker license may not exceed those  
15 established for an insurance agent, as otherwise provided by this  
16 chapter.

17 (c) A person who has been licensed as a life insurance agent  
18 in this state or the person's home state for at least one year and is  
19 licensed as a nonresident agent in this state meets the licensing  
20 requirements of this section and may operate as a broker.

21 (d) Not later than the 30th day after the first date of  
22 operating as a broker, a life insurance agent shall notify the  
23 commissioner on a form prescribed by the commissioner that the  
24 agent is acting as a broker and shall pay any applicable fee to be  
25 determined by the commissioner by rule. Notification must include  
26 an acknowledgement by the life insurance agent that the agent will  
27 operate as a broker in accordance with this chapter.

1       (e) An insurer that issued a policy that is the subject of a  
2 life settlement contract is not responsible for any act or omission  
3 of a broker or provider or purchaser arising out of or in connection  
4 with the life settlement transaction, unless the insurer receives  
5 compensation for the placement of a life settlement contract from  
6 the provider, purchaser, or broker in connection with the life  
7 settlement contract.

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

14       (g) A license expires on the second anniversary of the date  
15 of issuance. A license holder may renew the license on payment of a  
16 renewal fee. As specified by Subsection (b), the renewal fee for a  
17 provider license may not exceed a reasonable fee.

18       (h) An applicant shall provide the information that the  
19 commissioner requires on forms adopted by the commissioner. The  
20 commissioner may, at any time, require an applicant to fully  
21 disclose the identity of its stockholders, except stockholders  
22 owning fewer than 10 percent of the shares of an applicant whose  
23 shares are publicly traded, partners, officers and employees, and  
24 the commissioner may, in the exercise of the commissioner's sole  
25 discretion, refuse to issue a license in the name of any person if  
26 the commissioner is not satisfied that an officer, an employee, a  
27 stockholder, or a partner of the applicant who may materially



1 influence the applicant's conduct meets the standards of Sections  
2 1111A.001 to 1111A.018.

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

7 (j) After the filing of an application and the payment of  
8 the license fee, the commissioner shall investigate each applicant  
9 and may issue a license if the commissioner finds that the  
10 applicant:

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

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

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

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

22 (5) has provided to the commissioner an antifraud plan  
23 that meets the requirements of Section 1111A.022 and includes:

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

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

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

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

10          (k) The commissioner may not issue a license to a  
11 nonresident applicant unless a written designation of an agent for  
12 service of process is filed and maintained with the department or  
13 unless the applicant has filed with the department the applicant's  
14 written irrevocable consent that any action against the applicant  
15 may be commenced by service of process on the commissioner.

16          (l) A license holder shall file with the department not  
17 later than March 1 of each year an annual statement containing the  
18 information as the commissioner by rule prescribes.

19          (m) A provider may not allow any person to perform the  
20 functions of a broker unless the person holds a current, valid  
21 license as a broker, and as provided in this section.

22          (n) A broker may not allow any person to perform the  
23 functions of a provider unless the person holds a current, valid  
24 license as a provider, and as provided in this section.

25          (o) A provider or broker shall provide to the commissioner  
26 new or revised information about officers, stockholders described  
27 by Subsection (h), partners, directors, members, or designated

1 employees within 30 days of the change.

2 (p) An individual licensed as a broker shall complete on a  
3 biennial basis 15 hours of training related to life settlements and  
4 life settlement transactions, as required by the commissioner. A  
5 life insurance agent who is operating as a broker under this section  
6 is not subject to the requirements of this subsection.

7 (q) The business of life settlements constitutes the  
8 business of insurance.

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

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

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

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

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

24 (5) the license holder or any officer, partner,  
25 member, or director of the license holder has been convicted of a  
26 felony, or of any misdemeanor with respect to which criminal fraud  
27 is an element, or has pleaded guilty or nolo contendere with respect

1 to a felony or a misdemeanor with respect to which criminal fraud or  
2 moral turpitude is an element, regardless of whether a judgment of  
3 conviction has been entered by the court;

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

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

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

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

18 (b) The commissioner may deny a license application or  
19 suspend, revoke, or refuse to renew the license of a license holder  
20 in accordance with Chapter 2001, Government Code.

21 Sec. 1111A.005. REQUIREMENTS FOR CONTRACT FORMS,  
22 DISCLOSURE FORMS, AND ADVERTISEMENTS. (a) A person may not use  
23 any form of life settlement contract in this state unless the form  
24 has been filed with and approved, if required, by the commissioner  
25 in a manner that conforms with the filing procedures and any time  
26 restrictions or deeming provisions for life insurance forms,  
27 policies, and contracts.

1       (b) An insurer may not, as a condition of responding to a  
2 request for verification of coverage or in connection with the  
3 transfer of a policy pursuant to a life settlement contract,  
4 require that the owner, insured, provider, or broker sign any form,  
5 disclosure, consent, waiver, or acknowledgment that has not been  
6 expressly approved by the commissioner for use in connection with  
7 life settlement contracts.

8       (c) A person may not use a life settlement contract form or  
9 provide to an owner a disclosure statement form unless the form is  
10 first filed with and approved by the commissioner. The  
11 commissioner shall disapprove a life settlement contract form or  
12 disclosure statement form if, in the commissioner's opinion, the  
13 contract or contract provisions fail to meet the requirements of  
14 Sections 1111A.011, 1111A.012, 1111A.014, and 1111A.023(b), or are  
15 unreasonable, contrary to the interests of the public, or otherwise  
16 misleading or unfair to the owner.

17       (d) At the commissioner's discretion, the commissioner may  
18 require the submission of advertisements.

19       Sec. 1111A.006. REPORTING REQUIREMENTS AND PRIVACY.

20       (a) For a policy settled not later than the fifth anniversary of  
21 the date of policy issuance, each provider shall file with the  
22 commissioner not later than March 1 of each year an annual statement  
23 containing the information that the commissioner prescribes by  
24 rule. In addition to any other requirements, the annual statement  
25 must specify the total number, aggregate face amount, and life  
26 settlement proceeds of policies settled during the immediately  
27 preceding calendar year, together with a breakdown of the

1 information by policy issue year. The annual statement must also  
2 include the names of each insurance company whose policies have  
3 been settled and the brokers that have settled the policies.

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

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

18 (d) Except as otherwise allowed or required by law, a  
19 provider, broker, insurance company, insurance agent, information  
20 bureau, rating agency or company, or any other person with actual  
21 knowledge of an insured's identity, may not disclose the identity  
22 of an insured or information that there is a reasonable basis to  
23 believe could be used to identify the insured or the insured's  
24 financial or medical information to any other person unless the  
25 disclosure is:

26 (1) necessary to effect a life settlement contract  
27 between the owner and a provider and the owner and insured have

1 provided prior written consent to the disclosure;

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

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

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

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

24 (6) required to purchase stop loss coverage.

25 (e) Nonpublic personal information solicited or obtained in  
26 connection with a proposed or actual life settlement contract is  
27 subject to the provisions applicable to financial institutions

1 under the federal Gramm-Leach-Bliley Act (Pub. L. No. 106-102), and  
2 any other state and federal laws relating to confidentiality of  
3 nonpublic personal information.

4 Sec. 1111A.007. EXAMINATION. Subchapter B, Chapter 401,  
5 applies to a person engaged in the business of life settlements.

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

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

20 Sec. 1111A.009. INVESTIGATIVE AUTHORITY OF THE  
21 COMMISSIONER. The commissioner may investigate a suspected  
22 fraudulent life settlement act and a person engaged in the business  
23 of life settlements.

24 Sec. 1111A.010. COST OF EXAMINATIONS. The reasonable and  
25 necessary cost of an examination under this chapter is to be  
26 assessed against the person being examined in accordance with  
27 Section 751.208.



1       Sec. 1111A.011. ADVERTISING. (a) A broker or provider  
2 licensed pursuant to this chapter may conduct or participate in an  
3 advertisement in this state. The advertisement must comply with  
4 all advertising and marketing laws under Chapter 541 and rules  
5 adopted by the commissioner that are applicable to life insurers or  
6 to license holders under this chapter.

7       (b) Advertisements shall be accurate, truthful, and not  
8 misleading in fact or by implication.

9       (c) A person may not:

10           (1) market, advertise, solicit, or otherwise promote  
11 the purchase of a policy for the sole purpose of or with an emphasis  
12 on settling the policy; or

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

16       Sec. 1111A.012. DISCLOSURES TO OWNERS. (a) The broker, or  
17 the provider if no broker is involved in the application, shall  
18 provide in writing, in a separate document that is signed by the  
19 owner, the following information to the owner not later than the  
20 date of application for a life settlement contract:

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

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

27           (3) the fact that the proceeds from a life settlement

1 contract could be subject to the claims of creditors;

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

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

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

24 (7) the fact that entering into a life settlement  
25 contract may cause the owner to forfeit other rights or benefits,  
26 including conversion rights and waiver of premium benefits that may  
27 exist under the policy or certificate of a group policy, and that

1 assistance should be sought from a professional financial advisor;

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

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

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

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

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

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

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

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

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

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

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

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

1        (c) A broker shall provide the owner and the provider with  
2 at least the following disclosures not later than the date on which  
3 the life settlement contract is signed by all parties and which must  
4 be conspicuously displayed in the life settlement contract or in a  
5 separate document signed by the owner:

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

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

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

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

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

21           (d) For the purpose of this section, "gross offer or bid"  
22 means the total amount or value offered by the provider for the  
23 purchase of one or more life insurance policies, inclusive of  
24 commissions and fees.

25           (e) The failure to provide the disclosures or rights  
26 described in this section is an unfair method of competition or an  
27 unfair or deceptive act or practice.

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

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

15       (c) If the financing does not violate Section 1111A.017, the  
16 insurance carrier:

17           (1) may make disclosures, not later than the date of  
18 the delivery of the policy, to the applicant and the insured, either  
19 on the application or on an amendment to the application that  
20 include the following or substantially similar statements:

21 "If you have entered into a loan arrangement in which the policy is  
22 used as collateral, and the policy does change ownership at some  
23 point in the future in satisfaction of the loan, the following may  
24 be true:

25           (A) a change of ownership could lead to a  
26 stranger owning an interest in the insured's life;

27           (B) a change of ownership could in the future

1 limit your ability to purchase future insurance on the insured's  
2 life because there is a limit to how much coverage insurers will  
3 issue on one life;

4 (C) should there be a change of ownership and you  
5 wish to obtain more insurance coverage on the insured's life in the  
6 future, the insured's higher issue age, a change in health status,  
7 or other factors may reduce the ability to obtain coverage or may  
8 result in significantly higher premiums; and

9 (D) you should consult a professional advisor,  
10 since a change in ownership in satisfaction of the loan may result  
11 in tax consequences to the owner, depending on the structure of the  
12 loan.";

13 (2) may require certifications, such as the following,  
14 from the applicant or the insured:

15 (A) "I have not entered into any agreement or  
16 arrangement providing for the future sale of this life insurance  
17 policy";

18 (B) "My loan arrangement for this policy provides  
19 funds sufficient to pay for some or all of the premiums, costs, and  
20 expenses associated with obtaining and maintaining my life  
21 insurance policy, but I have not entered into any agreement by which  
22 I am to receive consideration in exchange for procuring this  
23 policy"; and

24 (C) "The borrower has an insurable interest in  
25 the insured."

26 Sec. 1111A.014. GENERAL RULES. (a) Before entering into a  
27 life settlement contract with an owner of a policy with respect to

1 which the insured is terminally or chronically ill, the provider  
2 must obtain:

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

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

12 (b) An insurer shall respond to a request for verification  
13 of coverage submitted by a provider, settlement broker, or life  
14 insurance agent not later than the 30th calendar day after the date  
15 the request is received. The request for verification of coverage  
16 must be made on a form approved by the commissioner. The insurer  
17 shall complete and issue the verification of coverage or indicate  
18 in which respects the insurer is unable to respond. In the  
19 response, the insurer shall indicate whether at the time of the  
20 response, based on the medical evidence and documents provided, the  
21 insurer intends to pursue an investigation about the validity of  
22 the insurance contract.

23 (c) On or before the date of execution of the life  
24 settlement contract, the provider shall obtain a witnessed document  
25 in which the owner consents to the settlement contract, represents  
26 that the owner has a full and complete understanding of the  
27 settlement contract and of the benefits of the policy, acknowledges



1 that the owner is entering into the settlement contract freely and  
2 voluntarily, and, for persons with a terminal or chronic illness or  
3 condition, acknowledges that the insured has a terminal or chronic  
4 illness and that the terminal or chronic illness or condition was  
5 diagnosed after the policy was issued.

6 (d) The insurer may not unreasonably delay effecting change  
7 of ownership or beneficiary with any life settlement contract  
8 lawfully entered into in this state or with a resident of this  
9 state.

10 (e) If a settlement broker or life insurance agent performs  
11 any of these activities required of the provider, the provider is  
12 deemed to have fulfilled the requirements of this section.

13 (f) If a broker performs the verification of coverage  
14 activities required of the provider, the provider is deemed to have  
15 fulfilled the requirements of Section 1111A.012.

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

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

26 (i) A life settlement contract entered into in this state  
27 must provide that the owner may rescind the contract on or before 15

1 days after the date the contract is executed by all parties to the  
2 contract. Rescission, if exercised by the owner, is effective only  
3 if notice of the rescission is given and the owner repays all  
4 proceeds and any premiums, loans, and loan interest paid on account  
5 of the provider within the rescission period. If the insured dies  
6 during the rescission period, the contract is rescinded subject to  
7 repayment by the owner or the owner's estate of all proceeds and any  
8 premiums, loans, and loan interest to the provider.

9 (j) Not later than the third business day after the date the  
10 provider receives from the owner the documents to effect the  
11 transfer of the insurance policy, the provider shall pay the  
12 proceeds of the settlement into an escrow or trust account managed  
13 by a trustee or escrow agent in a state or federally chartered  
14 financial institution pending acknowledgement of the transfer by  
15 the issuer of the policy. The trustee or escrow agent shall  
16 transfer to the owner the proceeds due to the owner not later than  
17 the third business day after the date the trustee or escrow officer  
18 receives from the insurer acknowledgment of the transfer of the  
19 insurance policy.

20 (k) Failure to tender the life settlement contract proceeds  
21 to the owner on or before the date disclosed to the owner renders  
22 the contract voidable by the owner for lack of consideration until  
23 the time the proceeds are tendered to and accepted by the owner. A  
24 failure to give written notice of the right of rescission under this  
25 subsection tolls the right of rescission for 30 days after the date  
26 the written notice of the right of rescission has been given.

27 (l) A fee paid by a provider, an owner, or other person to a

1 broker in exchange for services provided to the owner pertaining to  
2 a life settlement contract must be computed as a percentage of the  
3 offer obtained, not the face value of the policy. Nothing in this  
4 section prohibits a broker from voluntarily reducing the broker's  
5 fee to less than a percentage of the offer obtained.

6 (m) A broker shall disclose to the owner anything of value  
7 paid or given to a broker that relates to a life settlement  
8 contract.

9 (n) A person, at any time prior to or at the time of the  
10 application for, or issuance of, a policy, or during a two-year  
11 period beginning on the date of issuance of the policy, may not  
12 enter into a life settlement contract regardless of the date the  
13 compensation is to be provided and regardless of the date the  
14 assignment, transfer, sale, devise, bequest, or surrender of the  
15 policy is to occur. This prohibition does not apply if:

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

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

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

26 (B) the owner or insured disposes of the owner's  
27 or insured's ownership interests in a closely held corporation,

1 pursuant to the terms of a buyout or other similar agreement in  
2 effect at the time the insurance policy was initially issued;

3 (C) the owner's spouse dies;

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

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

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

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

15 (o) For the purposes of Subsection (n)(1), time covered  
16 under a group policy must be calculated without regard to a change  
17 in insurance carriers, provided the coverage has been continuous  
18 and under the same group sponsorship.

19 (p) Copies of the independent evidence described by  
20 Subsection (n)(2) must be submitted to the insurer at the time the  
21 provider submits a request to the insurer for verification of  
22 coverage. The copies must be accompanied by a letter of attestation  
23 from the provider that the copies are true and correct copies of the  
24 documents received by the provider. This section does not prohibit  
25 an insurer from exercising its right to contest the validity of a  
26 policy.

27 (q) If the provider submits to the insurer a copy of

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

5 Sec. 1111A.015. AUTHORITY TO ADOPT RULES. (a) The  
6 commissioner may adopt rules implementing this chapter and  
7 regulating the activities and relationships of providers, brokers,  
8 insurers, and their authorized representatives.

9 (b) The commissioner may not adopt a rule establishing a  
10 price or fee for the sale or purchase of a life settlement contract.  
11 This subsection does not prohibit the commissioner from adopting a  
12 rule relating to an unjust price or fee for the sale or purchase of a  
13 life settlement contract.

14 (c) The commissioner may not adopt a rule that regulates the  
15 actions of an investor providing money to a life or viatical  
16 settlement company.

17 Sec. 1111A.016. CONFLICT OF LAWS. (a) If there is more  
18 than one owner on a single policy, and the owners are residents of  
19 different states, the life settlement contract is governed by the  
20 law of the state in which the owner having the largest percentage  
21 ownership resides or, if the owners hold equal ownership, the state  
22 of residence of one owner agreed on in writing by all of the owners.  
23 The law of the state of the insured shall govern in the event that  
24 equal owners fail to agree in writing on a state of residence for  
25 jurisdictional purposes.

26 (b) A provider licensed in this state who enters into a life  
27 settlement contract with an owner who is a resident of another state

1 that has enacted statutes or adopted rules governing life  
2 settlement contracts is governed in the effectuation of that life  
3 settlement contract by the statutes and rules of the owner's state  
4 of residence. If the state in which the owner is a resident has not  
5 enacted statutes or adopted rules governing life settlement  
6 contracts, the provider shall give the owner notice that neither  
7 state regulates the transaction on which the owner is entering. For  
8 transactions in those states, however, the provider shall maintain  
9 all records required by this chapter if the transactions were  
10 executed in this state. The forms used in those states need not be  
11 approved by the department.

12 (c) If there is a conflict in the laws that apply to an owner  
13 and a purchaser in any individual transaction, the laws of the state  
14 that apply to the owner shall take precedence and the provider shall  
15 comply with those laws.

16 Sec. 1111A.017. PROHIBITED PRACTICES. (a) A person may  
17 not:

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

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

26 (3) engage in a fraudulent act or practice in  
27 connection with a transaction relating to any settlement involving

1 an owner who is a resident of this state;

2 (4) issue, solicit, market, or otherwise promote the  
3 purchase of an insurance policy for the purpose of, or with an  
4 emphasis on, settling the policy;

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

14 (6) with respect to any settlement contract or  
15 insurance policy and to a broker, knowingly solicit an offer from,  
16 effectuate a life settlement contract with, or make a sale to any  
17 provider, financing entity, or related provider trust that is  
18 controlling, controlled by, or under common control with the broker  
19 unless the relationship is fully disclosed to the owner;

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

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

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

13           (b) A violation of this section is a fraudulent life  
14 settlement act.

15           Sec. 1111A.018. FRAUD PREVENTION AND CONTROL. (a) A  
16 person may not commit a fraudulent life settlement act.

17           (b) A person may not interfere with the enforcement of this  
18 chapter or an investigation of a suspected or actual violation of  
19 this chapter.

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

24           (d) A life settlement contract and an application for a life  
25 settlement contract, regardless of the form of transmission, must  
26 contain the following, or a substantially similar, statement: "Any  
27 person who knowingly presents false information in an application



1 for insurance or a life settlement contract is guilty of a crime and  
2 may be subject to fines and confinement in prison."

3 (e) The failure to include a statement as required in  
4 Subsection (d) is not a defense in any prosecution for a fraudulent  
5 life settlement act.

6 Sec. 1111A.019. MANDATORY REPORTING OF FRAUDULENT LIFE  
7 SETTLEMENT ACTS. A person engaged in the business of life  
8 settlements has a duty under Section 701.051 to report a fraudulent  
9 life settlement act.

10 Sec. 1111A.020. CONFIDENTIALITY. (a) The documents and  
11 evidence obtained by the commissioner in an investigation of a  
12 suspected or an actual fraudulent life settlement act are  
13 privileged and confidential, are not a public record, and are not  
14 subject to discovery or subpoena in a civil or criminal action.

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

18 (1) in an administrative or judicial proceeding to  
19 enforce a provision of this code or another insurance law of this  
20 state;

21 (2) to a federal, state, or local law enforcement or  
22 regulatory agency, to an organization established for the purpose  
23 of detecting and preventing a fraudulent life settlement act, or to  
24 the National Association of Insurance Commissioners; or

25 (3) at the discretion of the commissioner, to a person  
26 in the business of life settlements that is aggrieved by a  
27 fraudulent life settlement act.

1       (c) Release of documents and evidence under Subsection (b)  
2 does not abrogate or modify the privilege granted in Subsection  
3 (a).

4       Sec. 1111A.021. OTHER LAW ENFORCEMENT OR REGULATORY  
5 AUTHORITY. This chapter does not:

6           (1) preempt the authority or relieve the duty of  
7 another law enforcement or regulatory agency to investigate,  
8 examine, and prosecute a suspected violation of law;

9           (2) preempt, supersede, or limit any provision of any  
10 state securities law or any rule, order, or notice issued under the  
11 law;

12           (3) prevent or prohibit a person from disclosing  
13 voluntarily information concerning life settlement fraud to a law  
14 enforcement or regulatory agency other than the department; or

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

19       Sec. 1111A.022. LIFE SETTLEMENT ANTIFRAUD INITIATIVES.

20 (a) A provider or broker shall implement antifraud initiatives  
21 reasonably calculated to detect, prosecute, and prevent fraudulent  
22 life settlement acts. At the discretion of the commissioner, the  
23 commissioner may order, or a license holder may request and the  
24 commissioner may grant, a modification of the following required  
25 initiatives as necessary to ensure an effective antifraud program.  
26 A modification granted under this section may be more or less  
27 restrictive than the required initiatives so long as the

1 modification may reasonably be expected to accomplish the purpose  
2 of this section. Antifraud initiatives must include:

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

5 (2) an antifraud plan, which must be submitted to the  
6 commissioner and must include:

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

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

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

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

21 (b) An antifraud plan submitted to the commissioner is  
22 privileged and confidential, is not subject to disclosure under  
23 Chapter 552, Government Code, and is not subject to discovery or  
24 subpoena in a civil action.

25 Sec. 1111A.023. INJUNCTION; CIVIL REMEDIES; CEASE AND  
26 DESIST ORDERS. (a) In addition to the penalties and other  
27 enforcement provisions of this chapter, if any person violates this

1 chapter or any rule implementing this chapter, the commissioner may  
2 seek an injunction in a court in the county where the person resides  
3 or has a principal place of business and may apply for temporary and  
4 permanent orders that the commissioner determines necessary to  
5 restrain the person from further committing the violation.

6 (b) The commissioner may issue a cease and desist order  
7 against a person who violates any provision of this chapter, any  
8 rule or order adopted by the commissioner, or any written agreement  
9 entered into with the commissioner, in accordance with Chapter 82.

10 (c) If the commissioner finds that an action in violation of  
11 this chapter presents an immediate danger to the public and  
12 requires an immediate final order, the commissioner may issue an  
13 emergency cease and desist order under Chapter 83.

14 (d) The provisions of this chapter may not be waived by  
15 agreement. No choice of law provision may prevent the application  
16 of this chapter to any settlement.

17 Sec. 1111A.024. PENALTIES. (a) It is a violation of this  
18 chapter for any person, provider, broker, or any other party  
19 related to the business of life settlements to commit a fraudulent  
20 life settlement act.

21 (b) A person who knowingly, recklessly, or intentionally  
22 commits a fraudulent life settlement act commits a criminal offense  
23 and is subject to penalties under Chapter 35, Penal Code.

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

26 Sec. 1111A.025. APPLICABILITY OF OTHER INSURANCE LAWS. The  
27 following laws apply to a person engaged in the business of life

1 settlements:

2 (1) Chapters 82, 83, 84, 101, 481, and 701;

3 (2) Sections 31.002, 32.021, 32.023, 32.041, 38.001,  
4 81.004, 86.001, 86.051, 86.052, 201.004, 401.051, 401.054,  
5 401.151(a), 521.003, 521.004, 543.001(c), 801.056, and 862.052;

6 (3) Subchapter A, Chapter 32;

7 (4) Subchapter C, Chapter 36;

8 (5) Subchapter B, Chapter 404; and

9 (6) Subchapter B, Chapter 491.

10 Sec. 1111A.026. APPLICABILITY OF CERTAIN PROVISIONS TO LIFE  
11 EXPECTANCY ESTIMATORS. (a) The following provisions do not apply  
12 to a broker who acts solely as a life expectancy estimator:

13 (1) Section 1111A.003(p);

14 (2) Section 1111A.012; and

15 (3) Sections 1111A.014(l) and (m).

16 (b) The commissioner may exempt a broker who acts only as a  
17 life expectancy estimator from other provisions of this chapter if  
18 the commissioner finds that the application of those provisions to  
19 the broker is not necessary for the public welfare.

20 SECTION 4. Section 1114.004(a), Insurance Code, is amended  
21 to read as follows:

22 (a) Except as otherwise specifically provided by this  
23 chapter, this chapter does not apply to transactions involving:

24 (1) credit life insurance;

25 (2) group life insurance or group annuities for which  
26 there is no direct solicitation of individuals by an agent;

27 (3) [~~group~~] life insurance and annuities used to fund

1 prepaid funeral benefits contracts, as defined by Chapter 154,  
2 Finance Code;

3 (4) an application to:

4 (A) exercise a contractual change or a conversion  
5 privilege made to the insurer that issued the existing policy or  
6 contract;

7 (B) replace an existing policy or contract by the  
8 insurer that issued the existing policy or contract under a program  
9 filed with and approved by the commissioner; or

10 (C) exercise a term conversion privilege among  
11 corporate affiliates;

12 (5) life insurance proposed to replace life insurance  
13 under a binding or conditional receipt issued by the same insurer;

14 (6) a policy or contract used to fund:

15 (A) an employee pension benefit plan or employee  
16 welfare benefit plan that is covered by the Employee Retirement  
17 Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

18 (B) a plan described by Section 401(a), 401(k),  
19 or 403(b), Internal Revenue Code of 1986, if established or  
20 maintained by an employer;

21 (C) a government or church plan, as defined by  
22 Section 414, Internal Revenue Code of 1986, a government or church  
23 welfare benefit plan, or a deferred compensation plan of a state or  
24 local government or tax exempt organization described under Section  
25 457, Internal Revenue Code of 1986; or

26 (D) a nonqualified deferred compensation  
27 arrangement established or maintained by an employer or plan

1 sponsor;

2 (7) new coverage provided under a life insurance  
3 policy or contract if the cost is borne wholly by the insured's  
4 employer or by an association of which the insured is a member;

5 (8) an existing life insurance policy that is a  
6 nonconvertible term life insurance policy scheduled to expire in  
7 five years or less and that cannot be renewed;

8 (9) immediate annuities purchased with proceeds from  
9 an existing contract; or

10 (10) structured settlements.

11 SECTION 5. Subchapter B, Chapter 1114, Insurance Code, is  
12 amended by adding Section 1114.057 to read as follows:

13 Sec. 1114.057. DISCLOSURE OF AVAILABILITY OF WAIVER OF  
14 SURRENDER CHARGES. An insurer that offers to waive surrender  
15 charges as described by Section 541.058(b)(4) shall provide  
16 reasonable notice of that offer to the insurer's prospective or  
17 current contract holders. The notice may be provided by any  
18 available means, including a disclosure document or by display on a  
19 link that is prominently placed on the insurer's Internet website.

20 SECTION 6. Section 1115.001, Insurance Code, is amended to  
21 read as follows:

22 Sec. 1115.001. PURPOSE. The purpose of this chapter is to  
23 establish standards and procedures regarding recommendations made  
24 to a consumer that result in a transaction involving annuity  
25 products, and to require insurers to establish a system to  
26 supervise those recommendations, to ensure that the insurance needs  
27 and financial objectives of the consumer as of the time of the

1 transaction are appropriately addressed.

2 SECTION 7. Section 1115.002, Insurance Code, is amended by  
3 amending Subdivisions (2), (3), and (4) and adding Subdivisions  
4 (2-a), (5), and (6) to read as follows:

5 (2) "Annuity" means an [a fixed, variable, or modified  
6 ~~guaranteed~~ annuity that is an insurance product under the laws of  
7 this state that is individually solicited, whether the product is  
8 classified as an individual annuity or group annuity.

9 (2-a) "Continuing education provider" means a person  
10 authorized to offer continuing education courses under Chapter  
11 4004.

12 (3) "Insurer" means a [an insurance] company  
13 authorized to engage in the business of life insurance and  
14 annuities in this state.

15 (4) "Recommendation" means advice provided by an  
16 agent, or an insurer if no agent is involved, to an individual  
17 consumer that results in a purchase, ~~[or]~~ exchange, or replacement  
18 of an annuity made in accordance with that advice.

19 (5) "Replacement" means a transaction in which a new  
20 policy or contract is to be purchased and the proposing agent, or  
21 the proposing insurer if an agent is not involved, knows or should  
22 know that, by reason of the transaction, an existing policy or  
23 contract has been or is to be:

24 (A) lapsed, forfeited, surrendered or partially  
25 surrendered, assigned to the replacing insurer, or otherwise  
26 terminated;

27 (B) converted to reduced paid-up insurance,



1 continued as extended term insurance, or otherwise reduced in value  
2 by the use of nonforfeiture benefits or other policy values;

3 (C) amended so as to effect either a reduction in  
4 benefits or in the term for which coverage would otherwise remain in  
5 force or for which benefits would be paid;

6 (D) reissued with any reduction in cash value; or

7 (E) used in a financed purchase.

8 (6) "Suitability information" means information that  
9 is reasonably appropriate to determine the suitability of a  
10 recommendation, including the following:

11 (A) age;

12 (B) annual income;

13 (C) financial situation and needs, including the  
14 financial resources used for the funding of the annuity;

15 (D) financial experience;

16 (E) financial objectives;

17 (F) intended use of the annuity;

18 (G) financial time horizon;

19 (H) existing assets, including investment and  
20 life insurance holdings;

21 (I) liquidity needs;

22 (J) liquid net worth;

23 (K) risk tolerance; and

24 (L) tax status.

25 SECTION 8. Section 1115.003, Insurance Code, is amended to  
26 read as follows:

27 Sec. 1115.003. APPLICABILITY; EXEMPTIONS. (a) This

1 chapter applies to any recommendation to purchase, replace, or  
2 exchange an annuity that:

3 (1) is made to a consumer by an agent, or an insurer if  
4 an agent is not involved; and

5 (2) results in the recommended purchase, replacement,  
6 or exchange.

7 (b) Unless otherwise specifically included, this chapter  
8 does not apply to transactions [~~recommendations~~] involving:

9 (1) direct response solicitations if there is no  
10 recommendation based on information collected from the consumer  
11 under this chapter; or

12 (2) contracts used to fund:

13 (A) an employee pension benefit plan or employee  
14 welfare benefit plan covered by the Employee Retirement Income  
15 Security Act of 1974 (29 U.S.C. Section 1001 et seq.);

16 (B) a plan described by Section 401(a), 401(k),  
17 403(b), 408(k), or 408(p), Internal Revenue Code of 1986, if  
18 established or maintained by an employer;

19 (C) a government or church plan, as defined by  
20 Section 414, Internal Revenue Code of 1986, a government or church  
21 welfare benefit plan, or a deferred compensation plan of a state or  
22 local government or tax exempt organization described under Section  
23 457, Internal Revenue Code of 1986;

24 (D) a nonqualified deferred compensation  
25 arrangement established or maintained by an employer or plan  
26 sponsor;

27 (E) settlements of or assumptions of liabilities

1 associated with personal injury litigation or any dispute or claim  
2 resolution process; or

3 (F) prepaid funeral benefits contracts, as  
4 defined by Chapter 154, Finance Code.

5 SECTION 9. Section 1115.051, Insurance Code, is amended to  
6 read as follows:

7 Sec. 1115.051. SUITABILITY OF ANNUITY PRODUCT REQUIRED.

8 (a) In recommending to a consumer the purchase of an annuity or the  
9 exchange of an annuity that results in another insurance  
10 transaction or series of insurance transactions, the agent, or the  
11 insurer if an agent is not involved, must have a reasonable basis to  
12 believe that:

13 (1) the recommendation is suitable for the consumer on  
14 the basis of the facts disclosed by the consumer as to the  
15 consumer's investments and other insurance products and as to the  
16 consumer's financial situation and needs, including the consumer's  
17 suitability information;

18 (2) the consumer has been reasonably informed of  
19 various features of the annuity, such as the potential surrender  
20 period and the surrender charge, any potential tax penalty if the  
21 consumer sells, exchanges, surrenders, or annuitizes the annuity,  
22 mortality and expense fees, investment advisory fees, potential  
23 charges for and features of riders, limitations on interest  
24 returns, insurance and investment components, and market risk;

25 (3) the consumer would benefit from certain features  
26 of the annuity, such as tax-deferred growth, annuitization, or a  
27 death or living benefit;

1           (4) the particular annuity as a whole, the underlying  
2 subaccounts to which funds are allocated at the time of the purchase  
3 or exchange of the annuity, and any riders or similar product  
4 enhancements are suitable, and, in the case of an exchange or  
5 replacement, the transaction as a whole is suitable, for the  
6 particular consumer based on the consumer's suitability  
7 information; and

8           (5) in the case of an exchange or replacement of an  
9 annuity, the exchange or replacement is suitable, including taking  
10 into consideration whether the consumer:

11           (A) will incur a surrender charge, be subject to  
12 the commencement of a new surrender period, lose existing benefits  
13 such as death, living, or other contractual benefits, or be subject  
14 to increased fees, investment advisory fees, or charges for riders  
15 or similar product enhancements;

16           (B) would benefit from product enhancements and  
17 improvements; and

18           (C) has had another annuity exchange or  
19 replacement, and in particular, an exchange or replacement in the  
20 preceding 36 months.

21           (b) Before the execution of a purchase, exchange, or  
22 replacement of an annuity resulting from a recommendation, an  
23 agent, or an insurer if an agent is not involved, shall make  
24 reasonable efforts to obtain the consumer's suitability  
25 information.

26           (c) Except as permitted by Subsection (d), an insurer may  
27 not issue an annuity recommended to a consumer unless the insurer

1 has a reasonable basis to believe the annuity is suitable based on  
2 the consumer's suitability information.

3 (d) Subject to Subsection (e), an agent or insurer does not  
4 have any obligation to a consumer related to an annuity transaction  
5 if:

6 (1) the consumer refuses to provide suitability  
7 information requested by the agent or insurer;

8 (2) the agent or insurer does not make a  
9 recommendation;

10 (3) the agent or insurer makes a recommendation later  
11 found to have been prepared based on inaccurate material  
12 information provided by the consumer; or

13 (4) the consumer decides to enter into a transaction  
14 that is not based on a recommendation of the agent or insurer.

15 (e) An insurer's issuance of an annuity under circumstances  
16 described by Subsection (d) must be reasonable under all  
17 circumstances actually known to the insurer at the time the annuity  
18 is issued.

19 (f) An agent, or an insurer if an agent is not involved,  
20 shall at the time of sale of an annuity:

21 (1) make a record of any recommendation made by the  
22 agent or insurer that is subject to Subsection (a);

23 (2) obtain a customer-signed statement documenting  
24 the customer's refusal, if any, to provide suitability information;  
25 and

26 (3) obtain a customer-signed statement acknowledging  
27 that an annuity transaction is not recommended if the customer

1 ~~decides to enter into an annuity transaction that is not based on~~  
2 ~~the agent's or insurer's recommendation. [Before the execution of a~~  
3 ~~purchase or exchange of an annuity resulting from a recommendation,~~  
4 ~~an agent, or the insurer if an agent is not involved, must make~~  
5 ~~reasonable efforts to obtain:~~

6 ~~[(1) information from the consumer concerning:~~

7 ~~[(A) the consumer's financial status,~~

8 ~~[(B) the consumer's tax status; and~~

9 ~~[(C) the consumer's investment objectives; and~~

10 ~~[(2) other relevant information used or considered to~~  
11 ~~be reasonable by the agent or that insurer in making~~  
12 ~~recommendations to consumers.~~

13 ~~[(b) In a recommendation to a consumer regarding the~~  
14 ~~purchase of an annuity or the exchange of an annuity that results in~~  
15 ~~another insurance transaction or series of insurance transactions,~~  
16 ~~an agent or the insurer, if an agent is not involved, has reasonable~~  
17 ~~grounds for believing that the recommendation is suitable for that~~  
18 ~~consumer based on the facts disclosed by the consumer regarding the~~  
19 ~~consumer's:~~

20 ~~[(1) investments and other insurance products; and~~

21 ~~[(2) financial situation and needs.~~

22 ~~[(c) An agent, or an insurer if an agent is not involved, has~~  
23 ~~no obligation to a consumer related to a recommendation if the~~  
24 ~~consumer:~~

25 ~~[(1) refuses to provide relevant information~~  
26 ~~requested by the agent or insurer,~~

27 ~~[(2) fails to provide complete or accurate information~~

1 ~~on the request of the agent or insurer, or~~  
2 ~~[(3) decides to enter into a transaction that is not~~  
3 ~~based on a recommendation of the agent or insurer.]~~

4 ~~[(d) An agent's or insurer's recommendation subject to~~  
5 ~~Subsection (a) must be reasonable under all the circumstances~~  
6 ~~actually known to the agent or insurer at the time of the~~  
7 ~~recommendation.]~~

8 SECTION 10. Section 1115.052, Insurance Code, is amended to  
9 read as follows:

10 Sec. 1115.052. SUPERVISION ~~[COMPLIANCE]~~ SYSTEM. (a) Each  
11 insurer shall establish supervision ~~[operate a system,]~~ that is  
12 reasonably designed to achieve the insurer's and the insurer's  
13 agents' compliance with this chapter ~~[, to supervise~~  
14 ~~recommendations].~~

15 (b) An insurer may comply with Subsection (a) ~~[by complying~~  
16 ~~with Subsections (c)-(e) or]~~ by establishing and maintaining the  
17 insurer's own supervision ~~[compliance]~~ system under which, at a  
18 minimum, the insurer ~~[that complies with Subsection (c). Each~~  
19 ~~agent and independent agency shall adopt an insurer's compliance~~  
20 ~~system or shall establish and maintain such a system.]~~

21 ~~[(c) A compliance system established under Subsection~~  
22 ~~(b) must include]:~~

23 (1) maintains reasonable procedures to inform the  
24 insurer's agents of the requirements of this chapter and  
25 incorporates the requirements of this chapter into relevant agent  
26 training manuals ~~[maintenance of written procedures]; [and]~~

27 (2) establishes standards for agent product training

1 and maintains reasonable procedures to require the insurer's agents  
2 to comply with the requirements of Section 1115.056;

3 (3) provides product-specific training and training  
4 materials that explain all material features of the insurer's  
5 annuity products to the insurer's agents;

6 (4) maintains procedures to review each  
7 recommendation electronically, physically, or otherwise before the  
8 issuance of an annuity that:

9 (A) are designed to ensure that there is a  
10 reasonable basis to determine that a recommendation is suitable;  
11 and

12 (B) may:

13 (i) include the application of a screening  
14 system to identify selected transactions for additional review; and

15 (ii) be designed to require additional  
16 review only of those transactions identified for additional review  
17 by the selection criteria;

18 (5) maintains reasonable procedures, such as  
19 confirmation of consumer suitability information, systematic  
20 customer surveys, interviews, confirmation letters, and programs  
21 of internal monitoring, to detect recommendations that are not  
22 suitable, which may involve applying sampling procedures or  
23 confirming suitability information after the issuance or delivery  
24 of the annuity; and

25 (6) annually provides a report to the insurer's senior  
26 management, including to the senior manager responsible for audit  
27 functions, that details a review, with appropriate testing,



1 reasonably designed to determine the effectiveness of the  
2 supervision system, the exceptions found, and any corrective action  
3 taken or recommended [~~periodic reviews of the insurer's or agent's~~  
4 ~~records in a manner reasonably designed to assist in detecting and~~  
5 ~~preventing violations of this chapter~~].

6 (c) This subsection does not prohibit an insurer from  
7 contracting for the performance of a function, including  
8 maintenance of procedures, required by Subsection (b). An  
9 insurer's supervision system under Subsection (b) must include the  
10 supervision of contractual performance under this subsection that  
11 includes, at a minimum [~~(d) An agent or insurer may contract with a~~  
12 ~~third party, including an agent or independent agency, to establish~~  
13 ~~and maintain a compliance system with respect to agents under~~  
14 ~~contract with or employed by the third party. The agent or insurer~~  
15 ~~shall make reasonable inquiries sufficient to ensure that the third~~  
16 ~~party is performing the functions required under Subsection (a),~~  
17 ~~and shall take any action reasonable under the circumstances to~~  
18 ~~enforce the contractual obligation to perform those functions. An~~  
19 ~~agent or insurer may comply with the obligation to make reasonable~~  
20 ~~inquiries by]:~~

21 (1) annually obtaining certification that complies  
22 with Section 1115.053 from a senior manager who represents that the  
23 contracted function is properly performed [~~of the third party that~~  
24 ~~the third party is performing the required functions]; and~~

25 (2) monitoring and, as appropriate, conducting audits  
26 to ensure that the contracted function is properly performed  
27 [~~periodically selecting third parties, based on reasonable~~

1 ~~selection criteria, for a review to determine whether the third~~  
2 ~~parties are performing the required functions].~~

3 (d) ~~[(e) An agent or insurer shall adopt procedures for~~  
4 ~~conducting a review under Subsection (d)(2) that are reasonable~~  
5 ~~under the circumstances. An insurer that contracts with a third~~  
6 ~~party under Subsection (d) and that complies with the requirements~~  
7 ~~to supervise under Subsection (d) is deemed to have complied with~~  
8 ~~the insurer's responsibilities under Subsection (b)].~~

9 ~~[(f)]~~ An insurer~~[, agent, or independent agency]~~ is not  
10 required by this section to~~+~~

11 ~~[(1) review, or provide for review of, all~~  
12 ~~agent-solicited transactions; or~~

13 ~~[(2)]~~ include in the supervision ~~[compliance]~~ system  
14 an agent's recommendations to consumers of products other than the  
15 annuities offered by the insurer~~[, agent, or independent agency]~~.

16 (e) An agent may not dissuade, or attempt to dissuade, a  
17 consumer from:

18 (1) truthfully responding to an insurer's request for  
19 confirmation or suitability information;

20 (2) filing a complaint; or

21 (3) cooperating with the investigation of a complaint.

22 SECTION 11. Section 1115.053, Insurance Code, is amended to  
23 read as follows:

24 Sec. 1115.053. CERTIFICATION REQUIREMENTS. ~~[(a) On~~  
25 ~~request by an insurer, an agent or independent agency that~~  
26 ~~contracts with an insurer under Section 1115.052(d) shall promptly~~  
27 ~~obtain a certification as described under Section 1115.052(d)(1) or~~

1 ~~give a clear statement that it is unable to meet the certification~~  
2 ~~criteria.~~

3 ~~[(b)]~~ A person may not provide a certification under Section  
4 1115.052(c)(1) ~~[1115.052(d)(1)]~~ unless the person:

5 (1) is a senior manager with responsibility for the  
6 delegated functions; and

7 (2) has a reasonable basis for making the  
8 certification.

9 SECTION 12. Section 1115.054, Insurance Code, is amended to  
10 read as follows:

11 Sec. 1115.054. COMPLIANCE WITH CERTAIN NATIONAL STANDARDS.

12 (a) Subject to Subsection (c), sales made in compliance  
13 ~~[Compliance]~~ with the conduct rules of the Financial Industry  
14 Regulatory Authority (FINRA) relating to suitability and  
15 supervision of annuity transactions, or the rules of another  
16 national organization recognized by the commissioner, satisfy  
17 ~~[satisfies]~~ the requirements of ~~[under]~~ this chapter. This section  
18 applies to FINRA member broker-dealer sales of variable annuities  
19 and fixed annuities if the suitability and supervision conduct  
20 rules are similar to those applied to variable annuity sales ~~[for~~  
21 ~~the recommendation of annuities registered under the Securities Act~~  
22 ~~of 1933 (15 U.S.C. Section 77a et seq.) or rules or regulations~~  
23 ~~adopted under that Act]~~.

24 (b) This section does not affect or limit the commissioner's  
25 ability to enforce or investigate under this chapter.

26 (c) Subsection (a) applies only if the insurer:

27 (1) monitors the FINRA member broker-dealer using

1 information collected in the normal course of the insurer's  
2 business; and

3 (2) provides to the FINRA member broker-dealer  
4 information and reports that are reasonably appropriate to assist  
5 the broker-dealer to maintain the broker-dealer's supervision  
6 system.

7 SECTION 13. Section 1115.056, Insurance Code, is amended to  
8 read as follows:

9 Sec. 1115.056. AGENT TRAINING [~~EDUCATION~~] REQUIREMENTS.

10 (a) An agent may not solicit the sale of an annuity product unless  
11 the agent has adequate knowledge of the product to recommend the  
12 annuity and is in compliance with the insurer's standards for  
13 product training. An agent may rely on insurer-provided,  
14 product-specific training standards and materials to comply with  
15 this subsection.

16 (b) An agent who engages in the sale of annuity products  
17 must complete a one-time training course approved by the department  
18 and provided by a continuing education provider.

19 (c) The training required by Subsection (b) must be of a  
20 length sufficient to qualify for at least four continuing education  
21 credits, as determined by the commissioner in accordance with  
22 Chapter 4004 and any rules adopted under that chapter, but may be  
23 longer. The training required by Subsection (b) may be used to  
24 satisfy the continuing education requirements under Subchapters B  
25 and E, Chapter 4004, and is not in addition to the continuing  
26 education requirements in Section 4004.202.

27 (d) The training required by Subsection (b) must include

1 information on the following topics:

2 (1) the types of annuities and various classifications  
3 of annuities;

4 (2) identification of the parties to an annuity;

5 (3) how fixed, variable, and indexed annuity contract  
6 provisions affect consumers;

7 (4) the application of income taxation of qualified  
8 and nonqualified annuities;

9 (5) the primary uses of annuities; and

10 (6) appropriate sales practices, replacement, and  
11 disclosure requirements.

12 (e) A provider of a course intended to comply with  
13 Subsection (b) must cover all topics listed in Subsection (d) and  
14 may not present any marketing information, provide training on  
15 sales techniques, or provide specific information about a  
16 particular insurer's products. Additional topics may be offered in  
17 conjunction with and in addition to the required topics.

18 (f) A provider of a course intended to comply with  
19 Subsection (b) must register as a continuing education provider in  
20 this state and comply with the rules and guidelines applicable to  
21 agent continuing education courses provided by Chapter 4004.

22 (g) An annuity training course may be conducted and  
23 completed by classroom or self-study methods in accordance with  
24 Chapter 4004.

25 (h) A provider of annuity training under Subsection (b) must  
26 comply with the reporting requirements and issue certificates of  
27 completion in accordance with Chapter 4004.

1       (i) The satisfaction of the training requirements of  
2 another state that are substantially similar to the provisions of  
3 this section is considered to satisfy the training requirements of  
4 this section.

5       (j) An insurer must verify that an agent has completed the  
6 annuity training course required by this section before allowing  
7 the agent to sell an annuity product for that insurer. An insurer  
8 may satisfy the insurer's responsibility under this section by:

9           (1) obtaining a certificate of completion of the  
10 training course or obtaining an appropriate report provided by the  
11 department;

12           (2) using a department-sponsored database or vendor;  
13 or

14           (3) using a reasonably reliable commercial database  
15 vendor that has a reporting arrangement with approved insurance  
16 education providers. ~~[A resident agent that intends to sell,~~  
17 ~~solicit, or negotiate a contract for an annuity in this state or to~~  
18 ~~represent an insurer in relation to such an annuity must submit~~  
19 ~~evidence satisfactory to the department of completion of at least~~  
20 ~~four hours of training relating to annuities before soliciting~~  
21 ~~individual consumers for the purpose of selling annuities.~~

22       ~~[(b) The training required under Subsection (a) may be used~~  
23 ~~to satisfy the continuing education requirements imposed under this~~  
24 ~~code and rules adopted under this code for issuance of a license~~  
25 ~~under this code.]~~

26       SECTION 14. Section 1115.101, Insurance Code, is amended to  
27 read as follows:

1           Sec. 1115.101. MITIGATION. An insurer is responsible for  
2 compliance with this chapter. If a violation occurs because of the  
3 action or inaction of the insurer or the insurer's agent, the [The]  
4 commissioner may:

5           (1) order:

6                   (A) the [~~(1) an~~] insurer to take reasonable  
7 appropriate corrective action for any consumer harmed by the  
8 insurer or by the insurer's agent because of a violation of this  
9 chapter; or

10                   (B) a general agency, independent agency, or the  
11 [~~(2) an~~] agent to take reasonably appropriate corrective action  
12 for any consumer harmed by the agent's violation of this chapter;  
13 and

14           (2) impose appropriate sanctions as provided by  
15 Section 1115.102 [~~(3) a managing general agent or independent~~  
16 ~~agency that employs or contracts with an agent to sell, or solicit~~  
17 ~~the sale of, annuities to consumers to take reasonably appropriate~~  
18 ~~corrective action for any consumer harmed by the agent's violation~~  
19 ~~of this chapter].~~

20           SECTION 15. Section 1115.102(b), Insurance Code, is amended  
21 to read as follows:

22           (b) The commissioner shall [~~may~~] reduce or eliminate a  
23 sanction for a violation of this chapter otherwise applicable if:

24                   (1) corrective action for the consumer was taken  
25 promptly by the agent or insurer after a violation was discovered;  
26 or

27                   (2) the violation was not part of a pattern or

1 practice.

2 SECTION 16. Section 1551.255(a), Insurance Code, is amended  
3 to read as follows:

4 (a) In this section, "viatical settlement" has the meaning  
5 assigned to "life settlement contract" by Section 1111A.002  
6 [~~1111.001~~].

7 SECTION 17. Subchapter A, Chapter 1111, Insurance Code, is  
8 repealed.

9 SECTION 18. (a) Section 541.058(b), Insurance Code, as  
10 amended by this Act, applies only to an exchange of life annuity  
11 contracts on or after the effective date of this Act. An exchange  
12 of life annuity contracts before the effective date of this Act is  
13 governed by the law in effect immediately before the effective date  
14 of this Act, and that law is continued in effect for that purpose.

15 (b) Section 1114.004(a), Insurance Code, as amended by this  
16 Act, applies only to a transaction involving a life insurance or  
17 annuity policy or contract occurring on or after the effective date  
18 of this Act. A transaction involving a policy or contract occurring  
19 before the effective date of this Act is governed by the law in  
20 effect immediately before the effective date of this Act, and that  
21 law is continued in effect for that purpose.

22 (c) Except as provided by this section, Chapter 1115,  
23 Insurance Code, as amended by this Act, applies only to a  
24 recommendation to purchase, exchange, or replace an annuity  
25 contract made on or after June 1, 2012, and any transaction arising  
26 from that recommendation. A recommendation made before June 1,  
27 2012, and a transaction arising from that recommendation are



1 governed by the law in effect immediately before the effective date  
2 of this Act, and that law is continued in effect for that purpose.

3 (d) An insurance agent who becomes licensed under Chapter  
4 4054, Insurance Code, on or after the effective date of this Act is  
5 subject to Section 1115.056, Insurance Code, as amended by this  
6 Act. An agent licensed under Chapter 4054, Insurance Code, before  
7 the effective date of this Act is not subject to Section 1115.056,  
8 Insurance Code, as amended by this Act, before March 1, 2012. On  
9 and after the effective date of this Act and before March 1, 2012,  
10 an insurance agent licensed under Chapter 4054, Insurance Code,  
11 before the effective date of this Act is subject to Section  
12 1115.056, Insurance Code, as that section existed immediately  
13 before the effective date of this Act, and that law is continued in  
14 effect for that purpose.

15 SECTION 19. (a) A provider lawfully transacting business  
16 in this state before the effective date of this Act may continue to  
17 do so pending approval or disapproval of the person's application  
18 for a license as long as the application is filed with the  
19 commissioner of insurance not later than 30 days after the date of  
20 the publication by the commissioner of an application form and  
21 instructions for licensure of providers. If the publication of the  
22 application form and instructions is before the effective date of  
23 this Act, then the filing of the application may not be later than  
24 30 days after the effective date of this Act and the applicant may  
25 use any form of life settlement contract that has been filed with  
26 the commissioner pending approval, provided that the form is  
27 otherwise in compliance with the provisions of this Act. A person

1 transacting business in this state under this provision shall  
2 comply with all other requirements of this Act.

3       (b) A person who has lawfully negotiated a life settlement  
4 contract between an owner residing in this state and one or more  
5 providers for at least one year immediately before the effective  
6 date of this Act may continue to do so pending approval or  
7 disapproval of the person's application for a license provided that  
8 the application is filed with the commissioner of insurance not  
9 later than the 30th day after the date of publication by the  
10 commissioner of an application form and instructions for licensure  
11 of brokers. If the publication of the application form and  
12 instructions is before the effective date of this Act, then the  
13 filing of the application may not be later than the 30th day after  
14 the effective date of this Act. Any person transacting business in  
15 this state under this provision shall comply with all other  
16 requirements of this Act.

17       SECTION 20. This Act takes effect September 1, 2011.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2277 was passed by the House on April 26, 2011, by the following vote: Yeas 148, Nays 0, 2 present, not voting; and that the House concurred in Senate amendments to H.B. No. 2277 on May 26, 2011, by the following vote: Yeas 134, Nays 7, 2 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 2277 was passed by the Senate, with amendments, on May 23, 2011, by the following vote: Yeas 30, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor