

By: Carona

S.B. No. 1213

A BILL TO BE ENTITLED

AN ACT

relating to consumer protections in the purchase of life settlement contracts; imposing penalties.

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

ARTICLE 1. LIFE SETTLEMENT CONTRACTS

SECTION 1.01. Subtitle A, Title 7, Insurance Code, is amended by adding Chapter 1111A to read as follows:

CHAPTER 1111A. LIFE SETTLEMENT CONTRACTS

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

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

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

(2) "Broker" means a person who, on behalf of an owner and for a fee, commission, or other valuable consideration, offers or attempts to negotiate a life settlement contract between an

1 owner and a provider or estimates life expectancies for a life
2 settlement contract. A broker who offers or attempts to negotiate a
3 life settlement contract represents only the owner and owes a
4 fiduciary duty to the owner to act according to the owner's
5 instructions, and in the best interest of the owner,
6 notwithstanding the manner in which the broker is compensated. A
7 broker does not include an attorney, certified public accountant,
8 or financial planner retained in the type of practice customarily
9 performed in a professional capacity to represent the owner whose
10 compensation is not paid directly or indirectly by the provider or
11 any other person, except the owner.

12 (3) "Business of life settlements" means an activity
13 involved in, but not limited to, offering to enter into,
14 soliciting, negotiating, procuring, effectuating, monitoring, or
15 tracking, of life settlement contracts.

16 (4) "Chronically ill" means:

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

20 (B) requiring substantial supervision to protect
21 the individual from threats to health and safety due to severe
22 cognitive impairment; or

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

1 (5) "Financing entity" means an underwriter,
2 placement agent, lender, purchaser of securities, purchaser of a
3 policy or certificate from a provider, credit enhancer, or any
4 entity that has a direct ownership in a policy or certificate that
5 is the subject of a life settlement contract whose principal
6 activity related to the transaction is providing funds to effect
7 the life settlement contract or purchase of a policy, and who has an
8 agreement in writing with a provider to finance the acquisition of a
9 life settlement contract. The term does not include a
10 non-accredited investor or purchaser.

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

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

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

21 (i) presenting, causing to be presented, or
22 preparing with knowledge and belief that it will be presented to or
23 by a provider, premium finance lender, broker, insurer, insurance
24 agent, or any other person, false material information, or
25 concealing material information, as part of, in support of, or
26 concerning a fact material to one or more of the following:

27 (a) an application for the issuance of

- 1 a life settlement contract or an insurance policy;
2 (b) the underwriting of a life
3 settlement contract or an insurance policy;
4 (c) a claim for payment or benefit
5 pursuant to a life settlement contract or an insurance policy;
6 (d) premium paid on an insurance
7 policy;
8 (e) payment for and changes in
9 ownership or beneficiary made in accordance with the terms of a life
10 settlement contract or an insurance policy;
11 (f) the reinstatement or conversion
12 of an insurance policy;
13 (g) in the solicitation, offer to
14 enter into, or effectuation of a life settlement contract, or an
15 insurance policy;
16 (h) the issuance of written evidence
17 of life settlement contracts or insurance; or
18 (i) an application for or the
19 existence of or any payment related to a loan secured directly or
20 indirectly by an interest in a life insurance policy;
21 (ii) failing to disclose to the insurer, if
22 the insurer has requested the disclosure, that the prospective
23 insured has undergone a life expectancy evaluation by any person or
24 entity other than the insurer or its authorized representatives in
25 connection with the issuance of the policy; or
26 (iii) employing a device, scheme, or
27 artifice to defraud in the business of life settlements; and

1 (B) acts or omissions in the furtherance of a
2 fraud or to prevent the detection of a fraud, or acts or omissions
3 that permit an employee or an agent to:

4 (i) remove, conceal, alter, destroy, or
5 sequester from the commissioner the assets or records of a license
6 holder or another person engaged in the business of life
7 settlements;

8 (ii) misrepresent or conceal the financial
9 condition of a license holder, financing entity, insurer, or other
10 person;

11 (iii) transact the business of life
12 settlements in violation of laws requiring a license, certificate
13 of authority, or other legal authority for the transaction of the
14 business of life settlements;

15 (iv) file with the commissioner or the
16 chief insurance regulatory official of another jurisdiction a
17 document containing false information or concealing information
18 about a material fact;

19 (v) engage in embezzlement, theft,
20 misappropriation, or conversion of monies, funds, premiums,
21 credits, or other property of a provider, insurer, insured, owner,
22 insurance policy owner, or any other person engaged in the business
23 of life settlements or insurance;

24 (vi) knowingly and with intent to defraud,
25 enter into, broker, or otherwise deal in a life settlement
26 contract, the subject of which is a life insurance policy that was
27 obtained by presenting false information concerning any fact

1 material to the policy or by concealing that fact, for the purpose
2 of misleading another, or providing information concerning any fact
3 material to the policy, if the owner or the owner's agent intended
4 to defraud the policy's issuer;

5 (vii) attempt to commit, assist, aid or
6 abet in the commission of, or engage in conspiracy to commit the
7 acts or omissions specified in this paragraph; or

8 (viii) misrepresent the state of residence
9 of an owner to be a state or jurisdiction that does not have a law
10 substantially similar to this chapter for the purpose of evading or
11 avoiding the provisions of this chapter.

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

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

19 (10) "Life insurance agent" means a person licensed in
20 this state as a resident or nonresident insurance agent who has
21 received qualification or authority to write life insurance
22 coverage under this code.

23 (11) "Life settlement contract" means a written
24 agreement entered into between a provider and an owner establishing
25 the terms under which compensation or anything of value will be paid
26 and is less than the expected death benefit of the insurance policy
27 or certificate, in return for the owner's assignment, transfer,

1 sale, devise, or bequest of the death benefit or a portion of an
2 insurance policy or certificate of insurance for compensation;
3 provided, however, that the minimum value for a life settlement
4 contract must be greater than a cash surrender value or accelerated
5 death benefit available at the time of an application for a life
6 settlement contract. The term also includes the transfer for
7 compensation or value of ownership or beneficial interest in a
8 trust or other entity that owns the policy if the trust or other
9 entity was formed or used for the principal purpose of acquiring one
10 or more life insurance contracts that insure the life of an
11 individual residing in this state. The term also includes:

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

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

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

20 (ii) the owner receives on the date of the
21 premium finance loan a guarantee of the future life settlement
22 value of the policy; or

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

26 (11-A) "Life settlement contract" does not include:

27 (A) a policy loan by a life insurance company

1 under the terms of a life insurance policy or accelerated death
2 provision contained in the life insurance policy, whether issued
3 with the original policy or as a rider;

4 (B) a premium finance loan or any loan made by a
5 bank or other licensed financial institution, provided that neither
6 default on the loan nor the transfer of the policy in connection
7 with the default is under an agreement or understanding with any
8 other person for the purpose of evading regulation under this
9 chapter;

10 (C) a collateral assignment of a life insurance
11 policy by an owner;

12 (D) a loan made by a lender that does not violate
13 Chapter 651, provided that the loan is not described in Subdivision
14 (11) and is not otherwise within the definition of life settlement
15 contract;

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

21 (F) a designation, consent, or agreement by an
22 insured who is an employee of an employer in connection with the
23 purchase by the employer, or trust established by the employer, of
24 life insurance on the life of the employee;

25 (G) a bona fide business succession planning
26 arrangement:

27 (i) between one or more shareholders in a

1 corporation or between a corporation and one or more of its
2 shareholders or one or more trusts established by its shareholders;

3 (ii) between one or more partners in a
4 partnership or between a partnership and one or more of its partners
5 or one or more trusts established by its partners; or

6 (iii) between one or more members in a
7 limited liability company or between a limited liability company
8 and one or more of its members or one or more trusts established by
9 its members;

10 (H) an agreement entered into by a service
11 recipient, or a trust established by the service recipient, and a
12 service provider, or a trust established by the service provider,
13 who performs significant services for the service recipient's trade
14 or business; or

15 (I) any other contract, transaction, or
16 arrangement from the definition of life settlement contract that
17 the commissioner determines is not of the type intended to be
18 regulated by this chapter.

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

22 (13) "Owner" means the owner of a life insurance
23 policy or a certificate holder under a group policy, with or without
24 a terminal illness, who enters or seeks to enter into a life
25 settlement contract. In this chapter, the term "owner" is not
26 limited to an owner of a life insurance policy or a certificate
27 holder under a group policy that insures the life of an individual

1 with a terminal or chronic illness or condition except as
2 specifically provided. The term does not include:

3 (A) a provider or other license holder under this
4 chapter;

5 (B) a qualified institutional buyer as defined by
6 17 C.F.R. Section 230.144A, as amended;

7 (C) a financing entity;

8 (D) a special purpose entity; or

9 (E) a related provider trust.

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

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

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

22 (17) "Person" means an individual or legal entity,
23 including a partnership, limited liability company, association,
24 trust, or corporation.

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

- 1 (A) a bank, savings bank, savings and loan
2 association, or credit union;
- 3 (B) a licensed lending institution or creditor or
4 secured party pursuant to a premium finance loan agreement that
5 takes an assignment of a life insurance policy or certificate
6 issued pursuant to a group life insurance policy as collateral for a
7 loan;
- 8 (C) the insurer of a life insurance policy or
9 rider to the extent of providing accelerated death benefits or
10 riders under Subchapter B, Chapter 1111, or cash surrender value;
- 11 (D) an individual who enters into or effectuates
12 not more than one agreement in a calendar year for the transfer of a
13 life insurance policy or certificate issued pursuant to a group
14 life insurance policy, for compensation or anything of value less
15 than the expected death benefit payable under the policy;
- 16 (E) a purchaser;
- 17 (F) any authorized or eligible insurer that
18 provides stop loss coverage to a provider, purchaser, financing
19 entity, special purpose entity, or related provider trust;
- 20 (G) a financing entity;
- 21 (H) a special purpose entity;
- 22 (I) a related provider trust;
- 23 (J) a broker; or
- 24 (K) an accredited investor or qualified
25 institutional buyer as those terms are defined by 17 C.F.R. Section
26 230.144A, as amended, who purchases a life settlement policy from a
27 provider.

1 (19) "Purchased policy" means a policy or group
2 certificate that has been acquired by a provider pursuant to a life
3 settlement contract.

4 (20) "Purchaser" means a person who pays compensation
5 or anything of value as consideration for a beneficial interest in a
6 trust that is vested with, or for the assignment, transfer, or sale
7 of, an ownership or other interest in a life insurance policy or a
8 certificate issued pursuant to a group life insurance policy that
9 has been the subject of a life settlement contract.

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

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

25 (23) "Special purpose entity" means a corporation,
26 partnership, trust, limited liability company, or other legal
27 entity formed solely to provide either directly or indirectly

1 access to institutional capital markets:

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

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

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

7 (ii) the securities pay a fixed rate of
8 return commensurate with established asset-backed institutional
9 capital markets.

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

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

17 (b) An application for a provider or broker license must be
18 made to the department by the applicant on a form prescribed by the
19 commissioner. The application must be accompanied by a fee in an
20 amount established by the commissioner by rule. The license and
21 renewal fees for a provider license must be reasonable and the
22 license and renewal fees for a broker license may not exceed those
23 established for an insurance agent, as otherwise provided by this
24 chapter.

25 (c) A person who has been licensed as a life insurance agent
26 in this state or the person's home state for at least one year and is
27 licensed as a nonresident agent in this state meets the licensing

1 requirements of this section and may operate as a broker.

2 (d) Not later than the 30th day after the first date of
3 operating as a broker, a life insurance agent shall notify the
4 commissioner on a form prescribed by the commissioner that the
5 agent is acting as a broker and shall pay any applicable fee to be
6 determined by the commissioner by rule. Notification must include
7 an acknowledgement by the life insurance agent that the agent will
8 operate as a broker in accordance with this chapter.

9 (e) An insurer that issued a policy that is the subject of a
10 life settlement contract is not responsible for any act or omission
11 of a broker or provider or purchaser arising out of or in connection
12 with the life settlement transaction, unless the insurer receives
13 compensation for the placement of a life settlement contract from
14 the provider, purchaser, or broker in connection with the life
15 settlement contract.

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

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

26 (h) An applicant shall provide the information that the
27 commissioner requires on forms adopted by the commissioner. The

1 commissioner may, at any time, require an applicant to fully
2 disclose the identity of the applicant's stockholders that own at
3 least 10 percent of the shares of an applicant the shares of which
4 are publicly traded, partners, officers and employees, and the
5 commissioner may, in the exercise of the commissioner's sole
6 discretion, refuse to issue a license in the name of any person if
7 the commissioner is not satisfied that an officer, an employee, a
8 stockholder, or a partner of the applicant who may materially
9 influence the applicant's conduct meets the standards of Sections
10 1111A.001 to 1111A.018.

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

15 (j) After the filing of an application and the payment of
16 the license fee, the commissioner shall investigate each applicant
17 and may issue a license if the commissioner finds that the
18 applicant:

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

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

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

26 (4) if the applicant is a legal entity, is formed or
27 organized under the laws of this state or is a foreign legal entity

1 authorized to transact business in this state, or provides a
2 certificate of good standing from the state of its domicile; and

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

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

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

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

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

18 (k) The commissioner may not issue a license to a
19 nonresident applicant unless a written designation of an agent for
20 service of process is filed and maintained with the department or
21 unless the applicant has filed with the department the applicant's
22 written irrevocable consent that any action against the applicant
23 may be commenced by service of process on the commissioner.

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

27 (m) A provider may not allow any person to perform the

1 functions of a broker unless the person holds a current, valid
2 license as a broker, and as provided in this section.

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

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

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

15 (q) The business of life settlements constitutes the
16 business of insurance.

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

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

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

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

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

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

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

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

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

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

26 (b) The commissioner may deny a license application or
27 suspend, revoke, or refuse to renew the license of a license holder

1 in accordance with Chapter 2001, Government Code.

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

9 (b) An insurer may not, as a condition of responding to a
10 request for verification of coverage or in connection with the
11 transfer of a policy pursuant to a life settlement contract,
12 require that the owner, insured, provider, or broker sign any form,
13 disclosure, consent, waiver, or acknowledgment that has not been
14 expressly approved by the commissioner for use in connection with
15 life settlement contracts.

16 (c) A person may not use a life settlement contract form or
17 provide to an owner a disclosure statement form unless the form is
18 first filed with and approved by the commissioner. The
19 commissioner shall disapprove a life settlement contract form or
20 disclosure statement form if, in the commissioner's opinion, the
21 contract or contract provisions fail to meet the requirements of
22 Sections 1111A.011, 1111A.012, 1111A.014, and 1111A.023(b), or are
23 unreasonable, contrary to the interests of the public, or otherwise
24 misleading or unfair to the owner.

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

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

1 (a) For a policy settled not later than the fifth anniversary of
2 the date of policy issuance, each provider shall file with the
3 commissioner not later than March 1 of each year an annual statement
4 containing the information that the commissioner prescribes by
5 rule. In addition to any other requirements, the annual statement
6 must specify the total number, aggregate face amount, and life
7 settlement proceeds of policies settled during the immediately
8 preceding calendar year, together with a breakdown of the
9 information by policy issue year. The annual statement must also
10 include the names of each insurance company whose policies have
11 been settled and the brokers that have settled the policies.

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

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

26 (d) Except as otherwise allowed or required by law, a
27 provider, broker, insurance company, insurance agent, information

1 bureau, rating agency or company, or any other person with actual
2 knowledge of an insured's identity, may not disclose the identity
3 of an insured or information that there is a reasonable basis to
4 believe could be used to identify the insured or the insured's
5 financial or medical information to any other person unless the
6 disclosure is:

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

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

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

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

23 (5) necessary to allow the provider or broker or the
24 provider's or broker's authorized representative to make contact
25 for the purpose of determining health status provided that in this
26 subdivision, authorized representative does not include a person
27 who has or may have a financial interest in the settlement contract

1 other than a provider, licensed broker, financing entity, related
2 provider trust, or special purpose entity and that the provider or
3 broker requires the authorized representative to agree in writing
4 to adhere to the privacy provisions of this chapter; or

5 (6) required to purchase stop loss coverage.

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

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

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

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

1 Sec. 1111A.009. INVESTIGATIVE AUTHORITY OF THE
2 COMMISSIONER. The commissioner may investigate a suspected
3 fraudulent life settlement act and a person engaged in the business
4 of life settlements.

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

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

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

17 (c) A person may not:

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

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

24 Sec. 1111A.012. DISCLOSURES TO OWNERS. (a) Not later than
25 the fifth day after the date a provider receives the application for
26 a life settlement contract, the provider shall provide, in a
27 separate written document, the following information to the owner:

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

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

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

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

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

25 (6) the fact that proceeds will be sent to the owner
26 within three business days after the provider has received the
27 insurer or group administrator's acknowledgement that ownership of

1 the policy or interest in the certificate has been transferred and
2 the beneficiary has been designated in accordance with the terms of
3 the life settlement contract;

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

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

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

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

19 (11) the following language: "All medical, financial,
20 or personal information solicited or obtained by a provider or
21 broker about an insured, including the insured's identity or the
22 identity of family members or a spouse or a significant other, may
23 be disclosed as necessary to effect the life settlement contract
24 between the owner and provider. If you are asked to provide this
25 information, you will be asked to consent to the disclosure. The
26 information may be provided to someone who buys the policy or
27 provides funds for the purchase. You may be asked to renew your

1 permission to share information every two years.";

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

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

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

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

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

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

27 (18) the fact that a change of ownership could in the

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

7 (B) a change of ownership could in the future
8 limit your ability to purchase future insurance on the insured's
9 life because there is a limit to how much coverage insurers will
10 issue on one life;

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

16 (D) you should consult a professional advisor,
17 since a change in ownership in satisfaction of the loan may result
18 in tax consequences to the owner, depending on the structure of the
19 loan.";

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

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

25 (B) "My loan arrangement for this policy provides
26 funds sufficient to pay for some or all of the premiums, costs, and
27 expenses associated with obtaining and maintaining my life

1 insurance policy, but I have not entered into any agreement by which
2 I am to receive consideration in exchange for procuring this
3 policy"; and

4 (C) "The borrower has an insurable interest in
5 the insured."

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

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

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

19 (b) An insurer shall respond to a request for verification
20 of coverage submitted by a provider, settlement broker, or life
21 insurance agent not later than the 30th calendar day after the date
22 the request is received. The request for verification of coverage
23 must be made on a form approved by the commissioner. The insurer
24 shall complete and issue the verification of coverage or indicate
25 in which respects the insurer is unable to respond. In the
26 response, the insurer shall indicate whether at the time of the
27 response, based on the medical evidence and documents provided, the

1 insurer intends to pursue an investigation about the validity of
2 the insurance contract.

3 (c) On or before the date of execution of the life
4 settlement contract, the provider shall obtain a witnessed document
5 in which the owner consents to the settlement contract, represents
6 that the owner has a full and complete understanding of the
7 settlement contract and of the benefits of the policy, acknowledges
8 that the owner is entering into the settlement contract freely and
9 voluntarily, and, for persons with a terminal or chronic illness or
10 condition, acknowledges that the insured has a terminal or chronic
11 illness and that the terminal or chronic illness or condition was
12 diagnosed after the policy was issued.

13 (d) The insurer may not unreasonably delay effecting change
14 of ownership or beneficiary with any life settlement contract
15 lawfully entered into in this state or with a resident of this
16 state.

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

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

23 (g) Not later than the 20th day after the date that an owner
24 executes the life settlement contract, the provider shall give
25 written notice to the insurer that issued that insurance policy
26 that the policy has become subject to a life settlement contract.
27 The notice shall be accompanied by the documents required by

1 Section 1111A.013(c).

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

6 (i) A life settlement contract entered into in this state
7 must provide that the owner may rescind the contract on or before 15
8 days after the date the contract is executed by all parties to the
9 contract. Rescission, if exercised by the owner, is effective only
10 if notice of the rescission is given and the owner repays all
11 proceeds and any premiums, loans, and loan interest paid on account
12 of the provider within the rescission period. If the insured dies
13 during the rescission period, the contract is rescinded subject to
14 repayment by the owner or the owner's estate of all proceeds and any
15 premiums, loans, and loan interest to the provider.

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

27 (k) Failure to tender the life settlement contract proceeds

1 to the owner on or before the date disclosed to the owner renders
2 the contract voidable by the owner for lack of consideration until
3 the time the proceeds are tendered to and accepted by the owner. A
4 failure to give written notice of the right of rescission under this
5 subsection tolls the right of rescission for 30 days after the date
6 the written notice of the right of rescission has been given.

7 (l) A fee paid by a provider, an owner, or other person to a
8 broker in exchange for services provided to the owner pertaining to
9 a life settlement contract must be computed as a percentage of the
10 offer obtained, not the face value of the policy. Nothing in this
11 section prohibits a broker from voluntarily reducing the broker's
12 fee to less than a percentage of the offer obtained.

13 (m) A broker shall disclose to the owner anything of value
14 paid or given to a broker that relates to a life settlement
15 contract.

16 (n) A person, at any time prior to or at the time of the
17 application for, or issuance of, a policy, or during a two-year
18 period beginning on the date of issuance of the policy, may not
19 enter into a life settlement contract regardless of the date the
20 compensation is to be provided and regardless of the date the
21 assignment, transfer, sale, devise, bequest, or surrender of the
22 policy is to occur. This prohibition does not apply if:

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

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

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

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

10 (C) the owner's spouse dies;

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

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

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

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

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

26 (p) Copies of the independent evidence described by
27 Subsection (n)(2) must be submitted to the insurer at the time the

1 provider submits a request to the insurer for verification of
2 coverage. The copies must be accompanied by a letter of attestation
3 from the provider that the copies are true and correct copies of the
4 documents received by the provider. This section does not prohibit
5 an insurer from exercising its right to contest the validity of a
6 policy.

7 (g) If the provider submits to the insurer a copy of
8 independent evidence provided for Subsection (n)(2)(A) at the time
9 the provider submits a request to the insurer to effect the transfer
10 of the policy to the provider, the copy is deemed to establish that
11 the settlement contract satisfies the requirements of this section.

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

16 (b) The commissioner may not adopt a rule establishing a
17 price or fee for the sale or purchase of a life settlement contract.
18 This subsection does not prohibit the commissioner from adopting a
19 rule relating to an unjust price or fee for the sale or purchase of a
20 life settlement contract.

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

24 Sec. 1111A.016. CONFLICT OF LAWS. (a) If there is more
25 than one owner on a single policy, and the owners are residents of
26 different states, the life settlement contract is governed by the
27 law of the state in which the owner having the largest percentage

1 ownership resides or, if the owners hold equal ownership, the state
2 of residence of one owner agreed on in writing by all of the owners.
3 The law of the state of the insured shall govern in the event that
4 equal owners fail to agree in writing on a state of residence for
5 jurisdictional purposes.

6 (b) A provider licensed in this state who enters into a life
7 settlement contract with an owner who is a resident of another state
8 that has enacted statutes or adopted rules governing life
9 settlement contracts is governed in the effectuation of that life
10 settlement contract by the statutes and rules of the owner's state
11 of residence. If the state in which the owner is a resident has not
12 enacted statutes or adopted rules governing life settlement
13 contracts, the provider shall give the owner notice that neither
14 state regulates the transaction on which the owner is entering. For
15 transactions in those states, however, the provider shall maintain
16 all records required by this chapter if the transactions were
17 executed in this state. The forms used in those states need not be
18 approved by the department.

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

23 Sec. 1111A.017. PROHIBITED PRACTICES. (a) A person may
24 not:

25 (1) enter into a life settlement contract if the
26 person knows or reasonably should have known that the life
27 insurance policy was obtained by means of a false, deceptive, or

- 1 misleading application for the policy;
- 2 (2) engage in a transaction, practice, or course of
3 business if the person knows or reasonably should have known that
4 the intent of engaging in the transaction, practice, or course of
5 business is to avoid the notice requirements of this chapter;
- 6 (3) engage in a fraudulent act or practice in
7 connection with a transaction relating to any settlement involving
8 an owner who is a resident of this state;
- 9 (4) issue, solicit, market, or otherwise promote the
10 purchase of an insurance policy for the purpose of, or with an
11 emphasis on, settling the policy;
- 12 (5) if providing premium financing, receive any
13 proceeds, fee, or other consideration from the policy or owner in
14 addition to the amounts required to pay principal, interest, and
15 any reasonable costs or expenses incurred by the lender or borrower
16 in connection with the premium finance agreement, except in event
17 of a default, unless either the default on the loan or transfer of
18 the policy occurs pursuant to an agreement or understanding with
19 any other person for the purpose of evading regulation under this
20 chapter;
- 21 (6) with respect to any settlement contract or
22 insurance policy and to a broker, knowingly solicit an offer from,
23 effectuate a life settlement contract with, or make a sale to any
24 provider, financing entity, or related provider trust that is
25 controlling, controlled by, or under common control with the broker
26 unless the relationship is fully disclosed to the owner;
- 27 (7) with respect to any life settlement contract or

1 insurance policy and a provider, knowingly enter into a life
2 settlement contract with an owner if, in connection with the life
3 settlement contract, anything of value will be paid to a broker that
4 is controlling, controlled by, or under common control with the
5 provider or the financing entity or related provider trust that is
6 involved in such settlement contract, unless the relationship is
7 fully disclosed to the owner;

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

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

20 (b) A violation of this section is a fraudulent life
21 settlement act.

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

24 (b) A person may not interfere with the enforcement of this
25 chapter or an investigation of a suspected or actual violation of
26 this chapter.

27 (c) A person in the business of life settlements may not

1 knowingly or intentionally permit a person convicted of a felony
2 involving dishonesty or breach of trust to participate in the
3 business of life settlements.

4 (d) A life settlement contract and an application for a life
5 settlement contract, regardless of the form of transmission, must
6 contain the following, or a substantially similar, statement: "Any
7 person who knowingly presents false information in an application
8 for insurance or a life settlement contract is guilty of a crime and
9 may be subject to fines and confinement in prison."

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

13 Sec. 1111A.019. MANDATORY REPORTING OF FRAUDULENT LIFE
14 SETTLEMENT ACTS. A person engaged in the business of life
15 settlements has a duty under Section 701.051 to report a fraudulent
16 life settlement act.

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

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

25 (1) in an administrative or judicial proceeding to
26 enforce a provision of this code or another insurance law of this
27 state;

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

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

8 (c) Release of documents and evidence under Subsection (b)
9 does not abrogate or modify the privilege granted in Subsection
10 (a).

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

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

16 (2) preempt, supersede, or limit any provision of any
17 state securities law or any rule, order, or notice issued under the
18 law;

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

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

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

27 (a) A provider or broker shall implement antifraud initiatives

1 reasonably calculated to detect, prosecute, and prevent fraudulent
2 life settlement acts. At the discretion of the commissioner, the
3 commissioner may order, or a license holder may request and the
4 commissioner may grant, a modification of the following required
5 initiatives as necessary to ensure an effective antifraud program.
6 A modification granted under this section may be more or less
7 restrictive than the required initiatives so long as the
8 modification may reasonably be expected to accomplish the purpose
9 of this section. Antifraud initiatives must include:
10 (1) fraud investigators, who may be provider or broker
11 employees or independent contractors; and
12 (2) an antifraud plan, which must be submitted to the
13 commissioner and must include:
14 (A) a description of the procedures for detecting
15 and investigating possible fraudulent life settlement acts and
16 procedures for resolving material inconsistencies between medical
17 records and insurance applications;
18 (B) a description of the procedures for reporting
19 possible fraudulent life settlement acts to the commissioner;
20 (C) a description of the plan for antifraud
21 education and training of underwriters and other personnel; and
22 (D) a description or chart outlining the
23 organizational arrangement of the antifraud personnel who are
24 responsible for the investigation and reporting of possible
25 fraudulent life settlement acts and investigating unresolved
26 material inconsistencies between medical records and insurance
27 applications.

1 (b) An antifraud plan submitted to the commissioner is
2 privileged and confidential, is not subject to disclosure under
3 Chapter 552, Government Code, and is not subject to discovery or
4 subpoena in a civil action.

5 Sec. 1111A.023. INJUNCTION; CIVIL REMEDIES; CEASE AND
6 DESIST ORDERS. (a) In addition to the penalties and other
7 enforcement provisions of this chapter, if any person violates this
8 chapter or any rule implementing this chapter, the commissioner may
9 seek an injunction in a court in the county where the person resides
10 or has a principal place of business and may apply for temporary and
11 permanent orders that the commissioner determines necessary to
12 restrain the person from further committing the violation.

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

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

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

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

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

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

6 Sec. 1111A.025. APPLICABILITY OF OTHER INSURANCE LAWS. The
7 following laws apply to a person engaged in the business of life
8 settlements:

9 (1) Chapters 82, 83, 84, 101, 481, 541, and 701;

10 (2) Sections 31.002, 32.021, 32.023, 32.041, 38.001,
11 81.004, 86.001, 86.051, 86.052, 201.004, 401.051, 401.054,
12 401.151(a), 521.003, 521.004, 543.001(c), 801.056, and 862.052;

13 (3) Subchapter A, Chapter 32;

14 (4) Subchapter C, Chapter 36;

15 (5) Subchapter B, Chapter 404; and

16 (6) Subchapter B, Chapter 491.

17 SECTION 1.02. (a) A provider lawfully transacting
18 business in this state before the effective date of this Act may
19 continue to do so pending approval or disapproval of the person's
20 application for a license as long as the application is filed with
21 the commissioner of insurance not later than 30 days after the date
22 of the publication by the commissioner of an application form and
23 instructions for licensure of providers. If the publication of the
24 application form and instructions is before the effective date of
25 this Act, then the filing of the application may not be later than
26 30 days after the effective date of this Act and the applicant may
27 use any form of life settlement contract that has been filed with

1 the commissioner pending approval, provided that the form is
2 otherwise in compliance with the provisions of this Act. A person
3 transacting business in this state under this provision shall
4 comply with all other requirements of this Act.

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

19 ARTICLE 2. CONFORMING AMENDMENTS

20 SECTION 2.01. The heading to Chapter 1111, Insurance Code,
21 is amended to read as follows:

22 CHAPTER 1111. [~~LIFE AND VIATICAL SETTLEMENTS AND~~] ACCELERATED
23 TERM LIFE INSURANCE BENEFITS

24 SECTION 2.02. Subsection (a), Section 1551.255, Insurance
25 Code, is amended to read as follows:

26 (a) In this section, "viatical settlement" has the meaning
27 assigned to "life settlement contract" by Section 1111A.002

1 [~~1111.001~~].

2 SECTION 2.03. Subchapter A, Chapter 1111, Insurance Code,
3 is repealed.

4 ARTICLE 3. EFFECTIVE DATE

5 SECTION 3.01. This Act takes effect September 1, 2011.