

1-1 By: Carona S.B. No. 1213
1-2 (In the Senate - Filed March 7, 2011; March 16, 2011, read
1-3 first time and referred to Committee on State Affairs; May 4, 2011,
1-4 reported adversely, with favorable Committee Substitute by the
1-5 following vote: Yeas 8, Nays 0; May 4, 2011, sent to printer.)

1-6 COMMITTEE SUBSTITUTE FOR S.B. No. 1213 By: Duncan

1-7 A BILL TO BE ENTITLED
1-8 AN ACT

1-9 relating to consumer protections in the purchase of life settlement
1-10 contracts; imposing penalties.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 ARTICLE 1. LIFE SETTLEMENT CONTRACTS

1-13 SECTION 1.01. Subtitle A, Title 7, Insurance Code, is
1-14 amended by adding Chapter 1111A to read as follows:

1-15 CHAPTER 1111A. LIFE SETTLEMENT CONTRACTS

1-16 Sec. 1111A.001. SHORT TITLE. This Act may be cited as the
1-17 Life Settlements Act.

1-18 Sec. 1111A.002. DEFINITIONS. In this chapter:

1-19 (1) "Advertisement" means a written, electronic, or
1-20 printed communication or a communication by means of a recorded
1-21 telephone message or transmitted on radio, television, the
1-22 Internet, or similar communications media, including film strips,
1-23 motion pictures, and videos, published, disseminated, circulated,
1-24 or placed directly before the public for the purpose of creating an
1-25 interest in or inducing an individual to purchase or sell, assign,
1-26 devise, bequest, or transfer the death benefit or ownership of a
1-27 life insurance policy or an interest in a life insurance policy
1-28 under a life settlement contract.

1-29 (2) "Broker" means a person who, on behalf of an owner
1-30 and for a fee, commission, or other valuable consideration, offers
1-31 or attempts to negotiate a life settlement contract between an
1-32 owner and a provider. A broker represents only the owner and owes a
1-33 fiduciary duty to the owner to act according to the owner's
1-34 instructions, and in the best interest of the owner,
1-35 notwithstanding the manner in which the broker is compensated. A
1-36 broker does not include an attorney, certified public accountant,
1-37 or financial planner retained in the type of practice customarily
1-38 performed in a professional capacity to represent the owner whose
1-39 compensation is not paid directly or indirectly by the provider or
1-40 any other person, except the owner.

1-41 (3) "Business of life settlements" means an activity
1-42 involved in, but not limited to, offering to enter into,
1-43 soliciting, negotiating, procuring, effectuating, monitoring, or
1-44 tracking, of life settlement contracts.

1-45 (4) "Chronically ill" means:

1-46 (A) being unable to perform at least two
1-47 activities of daily living such as eating, toileting, transferring,
1-48 bathing, dressing, or continence;

1-49 (B) requiring substantial supervision to protect
1-50 the individual from threats to health and safety due to severe
1-51 cognitive impairment; or

1-52 (C) having a level of disability similar to that
1-53 described in Paragraph (A) as determined under rules adopted by the
1-54 commissioner after consideration of any applicable regulation,
1-55 guideline, or determination of the United States Secretary of
1-56 Health and Human Services.

1-57 (5) "Financing entity" means an underwriter,
1-58 placement agent, lender, purchaser of securities, purchaser of a
1-59 policy or certificate from a provider, credit enhancer, or any
1-60 entity that has a direct ownership in a policy or certificate that
1-61 is the subject of a life settlement contract whose principal
1-62 activity related to the transaction is providing funds to effect
1-63 the life settlement contract or purchase of a policy, and who has an

2-1 agreement in writing with a provider to finance the acquisition of a
 2-2 life settlement contract. The term does not include a
 2-3 non-accredited investor or purchaser.
 2-4 (6) "Financing transaction" means a transaction in
 2-5 which a licensed provider obtains financing from a financing entity
 2-6 including secured or unsecured financing, a securitization
 2-7 transaction, or a securities offering that is either registered or
 2-8 exempt from registration under federal and state securities law.
 2-9 (7) "Fraudulent life settlement act" includes:
 2-10 (A) an act or omission committed by a person who,
 2-11 knowingly and with intent to defraud, for the purpose of depriving
 2-12 another of property or for pecuniary gain, commits, or permits an
 2-13 employee or an agent to engage in, acts including:
 2-14 (i) presenting, causing to be presented, or
 2-15 preparing with knowledge and belief that it will be presented to or
 2-16 by a provider, premium finance lender, broker, insurer, insurance
 2-17 producer, or any other person, false material information, or
 2-18 concealing material information, as part of, in support of, or
 2-19 concerning a fact material to one or more of the following:
 2-20 (a) an application for the issuance of
 2-21 a life settlement contract or an insurance policy;
 2-22 (b) the underwriting of a life
 2-23 settlement contract or an insurance policy;
 2-24 (c) a claim for payment or benefit
 2-25 pursuant to a life settlement contract or an insurance policy;
 2-26 (d) premium paid on an insurance
 2-27 policy;
 2-28 (e) payment for and changes in
 2-29 ownership or beneficiary made in accordance with the terms of a life
 2-30 settlement contract or an insurance policy;
 2-31 (f) the reinstatement or conversion
 2-32 of an insurance policy;
 2-33 (g) in the solicitation, offer to
 2-34 enter into, or effectuation of a life settlement contract, or an
 2-35 insurance policy;
 2-36 (h) the issuance of written evidence
 2-37 of life settlement contracts or insurance; or
 2-38 (i) an application for or the
 2-39 existence of or any payment related to a loan secured directly or
 2-40 indirectly by an interest in a life insurance policy;
 2-41 (ii) failing to disclose to the insurer, if
 2-42 the insurer has requested the disclosure, that the prospective
 2-43 insured has undergone a life expectancy evaluation by any person or
 2-44 entity other than the insurer or its authorized representatives in
 2-45 connection with the issuance of the policy; or
 2-46 (iii) employing a device, scheme, or
 2-47 artifice to defraud in the business of life settlements; and
 2-48 (B) acts or omissions in the furtherance of a
 2-49 fraud or to prevent the detection of a fraud, or acts or omissions
 2-50 that permit an employee or an agent to:
 2-51 (i) remove, conceal, alter, destroy, or
 2-52 sequester from the commissioner the assets or records of a license
 2-53 holder or another person engaged in the business of life
 2-54 settlements;
 2-55 (ii) misrepresent or conceal the financial
 2-56 condition of a license holder, financing entity, insurer, or other
 2-57 person;
 2-58 (iii) transact the business of life
 2-59 settlements in violation of laws requiring a license, certificate
 2-60 of authority, or other legal authority for the transaction of the
 2-61 business of life settlements;
 2-62 (iv) file with the commissioner or the
 2-63 chief insurance regulatory official of another jurisdiction a
 2-64 document containing false information or concealing information
 2-65 about a material fact;
 2-66 (v) engage in embezzlement, theft,
 2-67 misappropriation, or conversion of monies, funds, premiums,
 2-68 credits, or other property of a provider, insurer, insured, owner,
 2-69 insurance policy owner, or any other person engaged in the business

3-1 of life settlements or insurance;
3-2 (vi) knowingly and with intent to defraud,
3-3 enter into, broker, or otherwise deal in a life settlement
3-4 contract, the subject of which is a life insurance policy that was
3-5 obtained by presenting false information concerning any fact
3-6 material to the policy or by concealing that fact, for the purpose
3-7 of misleading another, or providing information concerning any fact
3-8 material to the policy, if the owner or the owner's agent intended
3-9 to defraud the policy's issuer;
3-10 (vii) attempt to commit, assist, aid or
3-11 abet in the commission of, or engage in conspiracy to commit the
3-12 acts or omissions specified in this paragraph; or
3-13 (viii) misrepresent the state of residence
3-14 of an owner to be a state or jurisdiction that does not have a law
3-15 substantially similar to this chapter for the purpose of evading or
3-16 avoiding the provisions of this chapter.
3-17 (8) "Insured" means a person covered under the policy
3-18 being considered for sale in a life settlement contract.
3-19 (9) "Life expectancy" means the arithmetic mean of the
3-20 number of months the insured under the life insurance policy to be
3-21 settled can be expected to live as determined by a life expectancy
3-22 company or provider considering medical records and appropriate
3-23 experiential data.
3-24 (10) "Life insurance agent" means a person licensed in
3-25 this state as a resident or nonresident insurance agent who has
3-26 received qualification or authority to write life insurance
3-27 coverage under this code.
3-28 (11) "Life settlement contract" means a written
3-29 agreement entered into between a provider and an owner establishing
3-30 the terms under which compensation or anything of value will be paid
3-31 and is less than the expected death benefit of the insurance policy
3-32 or certificate, in return for the owner's assignment, transfer,
3-33 sale, devise, or bequest of the death benefit or a portion of an
3-34 insurance policy or certificate of insurance for compensation;
3-35 provided, however, that the minimum value for a life settlement
3-36 contract must be greater than a cash surrender value or accelerated
3-37 death benefit available at the time of an application for a life
3-38 settlement contract. The term also includes the transfer for
3-39 compensation or value of ownership or beneficial interest in a
3-40 trust or other entity that owns the policy if the trust or other
3-41 entity was formed or used for the principal purpose of acquiring one
3-42 or more life insurance contracts that insure the life of an
3-43 individual residing in this state. The term also includes:
3-44 (A) a written agreement for a loan or other
3-45 lending transaction, secured primarily by an individual or group
3-46 life insurance policy; and
3-47 (B) a premium finance loan made for a policy on or
3-48 before the date of issuance of the policy if:
3-49 (i) the loan proceeds are not used solely to
3-50 pay premiums for the policy and any costs or expenses incurred by
3-51 the lender or the borrower in connection with the financing;
3-52 (ii) the owner receives on the date of the
3-53 premium finance loan a guarantee of the future life settlement
3-54 value of the policy; or
3-55 (iii) the owner agrees on the date of the
3-56 premium finance loan to sell the policy or any portion of its death
3-57 benefit on a date following the issuance of the policy.
3-58 (11-A) "Life settlement contract" does not include:
3-59 (A) a policy loan by a life insurance company
3-60 under the terms of a life insurance policy or accelerated death
3-61 provision contained in the life insurance policy, whether issued
3-62 with the original policy or as a rider;
3-63 (B) a premium finance loan or any loan made by a
3-64 bank or other licensed financial institution, provided that neither
3-65 default on the loan nor the transfer of the policy in connection
3-66 with the default is under an agreement or understanding with any
3-67 other person for the purpose of evading regulation under this
3-68 chapter;
3-69 (C) a collateral assignment of a life insurance

- 4-1 policy by an owner;
 4-2 (D) a loan made by a lender that does not violate
 4-3 Chapter 651, provided that the loan is not described in Subdivision
 4-4 (11) and is not otherwise within the definition of life settlement
 4-5 contract;
 4-6 (E) an agreement with respect to which all the
 4-7 parties are closely related to the insured by blood or law or have a
 4-8 lawful substantial economic interest in the continued life, health,
 4-9 and bodily safety of the person insured, or are trusts established
 4-10 primarily for the benefit of the parties;
 4-11 (F) a designation, consent, or agreement by an
 4-12 insured who is an employee of an employer in connection with the
 4-13 purchase by the employer, or trust established by the employer, of
 4-14 life insurance on the life of the employee;
 4-15 (G) a bona fide business succession planning
 4-16 arrangement:
 4-17 (i) between one or more shareholders in a
 4-18 corporation or between a corporation and one or more of its
 4-19 shareholders or one or more trusts established by its shareholders;
 4-20 (ii) between one or more partners in a
 4-21 partnership or between a partnership and one or more of its partners
 4-22 or one or more trusts established by its partners; or
 4-23 (iii) between one or more members in a
 4-24 limited liability company or between a limited liability company
 4-25 and one or more of its members or one or more trusts established by
 4-26 its members;
 4-27 (H) an agreement entered into by a service
 4-28 recipient, or a trust established by the service recipient, and a
 4-29 service provider, or a trust established by the service provider,
 4-30 who performs significant services for the service recipient's trade
 4-31 or business; or
 4-32 (I) any other contract, transaction, or
 4-33 arrangement from the definition of life settlement contract that
 4-34 the commissioner determines is not of the type intended to be
 4-35 regulated by this chapter.
 4-36 (12) "Net death benefit" means the amount of the life
 4-37 insurance policy or certificate to be settled less any outstanding
 4-38 debts or liens.
 4-39 (13) "Owner" means the owner of a life insurance
 4-40 policy or a certificate holder under a group policy, with or without
 4-41 a terminal illness, who enters or seeks to enter into a life
 4-42 settlement contract. In this chapter, the term "owner" is not
 4-43 limited to an owner of a life insurance policy or a certificate
 4-44 holder under a group policy that insures the life of an individual
 4-45 with a terminal or chronic illness or condition except as
 4-46 specifically provided. The term does not include:
 4-47 (A) a provider or other license holder under this
 4-48 chapter;
 4-49 (B) a qualified institutional buyer as defined by
 4-50 17 C.F.R. Section 230.144A, as amended;
 4-51 (C) a financing entity;
 4-52 (D) a special purpose entity; or
 4-53 (E) a related provider trust.
 4-54 (14) "Patient identifying information" means an
 4-55 insured's address, telephone number, facsimile number, e-mail
 4-56 address, photograph or likeness, employer, employment status,
 4-57 social security number, or any other information that is likely to
 4-58 lead to the identification of the insured.
 4-59 (15) "Policy" means an individual or group policy,
 4-60 group certificate, contract, or arrangement of life insurance owned
 4-61 by a resident of this state, regardless of whether delivered or
 4-62 issued for delivery in this state.
 4-63 (16) "Premium finance loan" is a loan made primarily
 4-64 for the purposes of making premium payments on a life insurance
 4-65 policy that is secured by an interest in the life insurance policy.
 4-66 (17) "Person" means an individual or legal entity,
 4-67 including a partnership, limited liability company, association,
 4-68 trust, or corporation.
 4-69 (18) "Provider" means a person, other than an owner,

5-1 who enters into or effectuates a life settlement contract with an
5-2 owner. The term does not include:
5-3 (A) a bank, savings bank, savings and loan
5-4 association, or credit union;
5-5 (B) a licensed lending institution or creditor or
5-6 secured party pursuant to a premium finance loan agreement that
5-7 takes an assignment of a life insurance policy or certificate
5-8 issued pursuant to a group life insurance policy as collateral for a
5-9 loan;
5-10 (C) the insurer of a life insurance policy or
5-11 rider to the extent of providing accelerated death benefits or
5-12 riders under Subchapter B, Chapter 1111, or cash surrender value;
5-13 (D) an individual who enters into or effectuates
5-14 not more than one agreement in a calendar year for the transfer of a
5-15 life insurance policy or certificate issued pursuant to a group
5-16 life insurance policy, for compensation or anything of value less
5-17 than the expected death benefit payable under the policy;
5-18 (E) a purchaser;
5-19 (F) any authorized or eligible insurer that
5-20 provides stop loss coverage to a provider, purchaser, financing
5-21 entity, special purpose entity, or related provider trust;
5-22 (G) a financing entity;
5-23 (H) a special purpose entity;
5-24 (I) a related provider trust;
5-25 (J) a broker; or
5-26 (K) an accredited investor or qualified
5-27 institutional buyer as those terms are defined by 17 C.F.R. Section
5-28 230.144A, as amended, who purchases a life settlement policy from a
5-29 provider.
5-30 (19) "Purchased policy" means a policy or group
5-31 certificate that has been acquired by a provider pursuant to a life
5-32 settlement contract.
5-33 (20) "Purchaser" means a person who pays compensation
5-34 or anything of value as consideration for a beneficial interest in a
5-35 trust that is vested with, or for the assignment, transfer, or sale
5-36 of, an ownership or other interest in a life insurance policy or a
5-37 certificate issued pursuant to a group life insurance policy that
5-38 has been the subject of a life settlement contract.
5-39 (21) "Related provider trust" means a titling trust or
5-40 other trust established by a licensed provider or a financing
5-41 entity for the sole purpose of holding the ownership or beneficial
5-42 interest in purchased policies in connection with a financing
5-43 transaction. In order to qualify as a related provider trust, the
5-44 trust must have a written agreement with the licensed provider
5-45 under which the licensed provider is responsible for ensuring
5-46 compliance with all statutory and regulatory requirements and under
5-47 which the trust agrees to make all records and files relating to
5-48 life settlement transactions available to the department as if
5-49 those records and files were maintained directly by the licensed
5-50 provider.
5-51 (22) "Settled policy" means a life insurance policy or
5-52 certificate that has been acquired by a provider pursuant to a life
5-53 settlement contract.
5-54 (23) "Special purpose entity" means a corporation,
5-55 partnership, trust, limited liability company, or other legal
5-56 entity formed solely to provide either directly or indirectly
5-57 access to institutional capital markets:
5-58 (A) for a financing entity or provider; or
5-59 (B) in connection with a transaction in which:
5-60 (i) the securities in the special purpose
5-61 entity are acquired by the owner or by a qualified institutional
5-62 buyer as defined by 17 C.F.R. Section 230.144A, as amended; or
5-63 (ii) the securities pay a fixed rate of
5-64 return commensurate with established asset-backed institutional
5-65 capital markets.
5-66 (24) "Terminally ill" means having an illness or
5-67 sickness that can reasonably be expected to result in death not
5-68 later than 24 months after the date of diagnosis.
5-69 Sec. 1111A.003. LICENSING REQUIREMENTS; EXEMPTION. (a) A

6-1 person, wherever located, may not act as a provider or broker with
6-2 an owner who is a resident of this state, unless the person holds a
6-3 license from the department. If there is more than one owner on a
6-4 single policy and the owners are residents of different states, the
6-5 life settlement contract is governed by the law of the state in
6-6 which the owner having the largest percentage ownership resides or,
6-7 if the owners hold equal ownership, the state of residence of one
6-8 owner agreed on in writing by all owners.

6-9 (b) An application for a provider or broker license must be
6-10 made to the department by the applicant on a form prescribed by rule
6-11 by the commissioner. The application must be accompanied by a fee
6-12 in an amount established by the commissioner by rule. The license
6-13 and renewal fees for a provider license must be reasonable and the
6-14 license and renewal fees for a broker license may not exceed those
6-15 established for an insurance agent, as otherwise provided by this
6-16 chapter.

6-17 (c) A person who has been licensed as a life insurance agent
6-18 in this state or the person's home state for at least one year and is
6-19 licensed as a nonresident agent in this state meets the licensing
6-20 requirements of this section and may operate as a broker.

6-21 (d) Not later than the 30th day after the first date of
6-22 operating as a broker, a life insurance agent shall notify the
6-23 commissioner on a form prescribed by the commissioner that the
6-24 agent is acting as a broker and shall pay any applicable fee to be
6-25 determined by the commissioner by rule. Notification must include
6-26 an acknowledgement by the life insurance agent that the agent will
6-27 operate as a broker in accordance with this chapter.

6-28 (e) An insurer that issued a policy that is the subject of a
6-29 life settlement contract is not responsible for any act or omission
6-30 of a broker or provider or purchaser arising out of or in connection
6-31 with the life settlement transaction, unless the insurer receives
6-32 compensation for the placement of a life settlement contract from
6-33 the provider, purchaser, or broker in connection with the life
6-34 settlement contract.

6-35 (f) A person licensed as an attorney, certified public
6-36 accountant, or financial planner accredited by a nationally
6-37 recognized accreditation agency, who is retained to represent the
6-38 owner and whose compensation is not paid directly or indirectly by
6-39 the provider or purchaser, may negotiate life settlement contracts
6-40 for the owner without having to obtain a license as a broker.

6-41 (g) A license expires on the second anniversary of the date
6-42 of issuance. A license holder may renew the license on payment of a
6-43 renewal fee. As specified by Subsection (b), the renewal fee for a
6-44 provider license may not exceed a reasonable fee.

6-45 (h) An applicant shall provide the information that the
6-46 commissioner requires on forms adopted by the commissioner. The
6-47 commissioner may, at any time, require an applicant to fully
6-48 disclose the identity of the applicant's stockholders that own at
6-49 least 10 percent of the shares of an applicant the shares of which
6-50 are publicly traded, partners, officers and employees, and the
6-51 commissioner may, in the exercise of the commissioner's sole
6-52 discretion, refuse to issue a license in the name of any person if
6-53 the commissioner is not satisfied that an officer, an employee, a
6-54 stockholder, or a partner of the applicant who may materially
6-55 influence the applicant's conduct meets the standards of Sections
6-56 1111A.001 to 1111A.018.

6-57 (i) A license issued to a partnership, corporation, or other
6-58 entity authorizes each member, officer, and designated employee
6-59 named in the application and any supplement to the application to
6-60 act as a license holder under the license.

6-61 (j) After the filing of an application and the payment of
6-62 the license fee, the commissioner shall investigate each applicant
6-63 and may issue a license if the commissioner finds that the
6-64 applicant:

6-65 (1) if a provider, has provided a detailed plan of
6-66 operation;

6-67 (2) is competent and trustworthy and intends to
6-68 transact business in good faith;

6-69 (3) has a good business reputation and has had

7-1 experience, training, or education to qualify in the business for
7-2 which the license is applied;
7-3 (4) if the applicant is a legal entity, is formed or
7-4 organized under the laws of this state or is a foreign legal entity
7-5 authorized to transact business in this state, or provides a
7-6 certificate of good standing from the state of its domicile; and
7-7 (5) has provided to the commissioner an antifraud plan
7-8 that meets the requirements of Section 1111A.024 and includes:
7-9 (A) a description of the procedures for detecting
7-10 and investigating possible fraudulent acts and procedures for
7-11 resolving material inconsistencies between medical records and
7-12 insurance applications;
7-13 (B) a description of the procedures for reporting
7-14 fraudulent insurance acts to the commissioner;
7-15 (C) a description of the plan for antifraud
7-16 education and training of its underwriters and other personnel; and
7-17 (D) a written description or chart outlining the
7-18 arrangement of the antifraud personnel who are responsible for the
7-19 investigation and reporting of possible fraudulent insurance acts
7-20 and the investigation of unresolved material inconsistencies
7-21 between medical records and insurance applications.
7-22 (k) The commissioner may not issue a license to a
7-23 nonresident applicant unless a written designation of an agent for
7-24 service of process is filed and maintained with the department or
7-25 unless the applicant has filed with the department the applicant's
7-26 written irrevocable consent that any action against the applicant
7-27 may be commenced by service of process on the commissioner.
7-28 (l) A license holder shall file with the department not
7-29 later than March 1 of each year an annual statement containing the
7-30 information as the commissioner by rule prescribes.
7-31 (m) A provider may not allow any person to perform the
7-32 functions of a broker unless the person holds a current, valid
7-33 license as a broker, and as provided in this section.
7-34 (n) A broker may not allow any person to perform the
7-35 functions of a provider unless the person holds a current, valid
7-36 license as a provider, and as provided in this section.
7-37 (o) A provider or broker shall provide to the commissioner
7-38 new or revised information about officers, stockholders described
7-39 by Subsection (h), partners, directors, members, or designated
7-40 employees within 30 days of the change.
7-41 (p) An individual licensed as a broker shall complete on a
7-42 biennial basis 15 hours of training related to life settlements and
7-43 life settlement transactions, as required by the commissioner. A
7-44 life insurance agent who is operating as a broker under this section
7-45 is not subject to the requirements of this subsection.
7-46 Sec. 1111A.004. LICENSE SUSPENSION, REVOCATION, OR REFUSAL
7-47 TO RENEW. (a) The commissioner may suspend, revoke, or refuse to
7-48 renew the license of a license holder if the commissioner finds
7-49 that:
7-50 (1) there was a material misrepresentation in the
7-51 application for the license;
7-52 (2) the license holder or an officer, partner, member,
7-53 or director of the license holder has been guilty of fraudulent or
7-54 dishonest practices, is subject to a final administrative action,
7-55 or is otherwise shown to be untrustworthy or incompetent to act as a
7-56 license holder;
7-57 (3) the license holder is a provider and demonstrates
7-58 a pattern of unreasonably withholding payments to policy owners;
7-59 (4) the license holder no longer meets the
7-60 requirements for initial licensure;
7-61 (5) the license holder or any officer, partner,
7-62 member, or director of the license holder has been convicted of a
7-63 felony, or of any misdemeanor with respect to which criminal fraud
7-64 is an element, or has pleaded guilty or nolo contendere with respect
7-65 to a felony or a misdemeanor with respect to which criminal fraud or
7-66 moral turpitude is an element, regardless of whether a judgment of
7-67 conviction has been entered by the court;
7-68 (6) the license holder is a provider and has entered
7-69 into a life settlement contract that has not been approved under

8-1 this chapter;

8-2 (7) the license holder is a provider and has failed to
 8-3 honor contractual obligations in a life settlement contract;

8-4 (8) the license holder is a provider and has assigned,
 8-5 transferred, or pledged a settled policy to a person other than a
 8-6 provider licensed in this state, a purchaser, an accredited
 8-7 investor or qualified institutional buyer as defined respectively
 8-8 in 17 C.F.R. Section 230.144A, as amended, a financing entity, a
 8-9 special purpose entity, or a related provider trust; or

8-10 (9) the license holder or any officer, partner,
 8-11 member, or key management personnel of the license holder has
 8-12 violated this chapter.

8-13 (b) The commissioner may deny a license application or
 8-14 suspend, revoke, or refuse to renew the license of a license holder
 8-15 only after a hearing in accordance with Chapter 2001, Government
 8-16 Code.

8-17 Sec. 1111A.005. REQUIREMENTS FOR CONTRACT FORMS,
 8-18 DISCLOSURE FORMS, AND ADVERTISEMENTS. (a) A person may not use
 8-19 any form of life settlement contract in this state unless the form
 8-20 has been filed with and approved, if required, by the commissioner
 8-21 in a manner that conforms with the filing procedures and any time
 8-22 restrictions or deeming provisions for life insurance forms,
 8-23 policies, and contracts.

8-24 (b) An insurer may not, as a condition of responding to a
 8-25 request for verification of coverage or in connection with the
 8-26 transfer of a policy pursuant to a life settlement contract,
 8-27 require that the owner, insured, provider, or broker sign any form,
 8-28 disclosure, consent, waiver, or acknowledgment that has not been
 8-29 expressly approved by the commissioner for use in connection with
 8-30 life settlement contracts.

8-31 (c) A person may not use a life settlement contract form or
 8-32 provide to an owner a disclosure statement form unless the form is
 8-33 first filed with and approved by the commissioner. The
 8-34 commissioner shall disapprove a life settlement contract form or
 8-35 disclosure statement form if, in the commissioner's opinion, the
 8-36 contract or contract provisions fail to meet the requirements of
 8-37 Sections 1111A.011, 1111A.012, 1111A.014, and 1111A.025(b), or are
 8-38 unreasonable, contrary to the interests of the public, or otherwise
 8-39 misleading or unfair to the owner.

8-40 (d) At the commissioner's discretion, the commissioner may
 8-41 require the submission of advertisements.

8-42 Sec. 1111A.006. REPORTING REQUIREMENTS AND PRIVACY.
 8-43 (a) For a policy settled not later than the fifth anniversary of
 8-44 the date of policy issuance, each provider shall file with the
 8-45 commissioner not later than March 1 of each year an annual statement
 8-46 containing the information that the commissioner prescribes by
 8-47 rule. In addition to any other requirements, the annual statement
 8-48 must specify the total number, aggregate face amount, and life
 8-49 settlement proceeds of policies settled during the immediately
 8-50 preceding calendar year, together with a breakdown of the
 8-51 information by policy issue year. The annual statement must also
 8-52 include the names of each insurance company whose policies have
 8-53 been settled and the brokers that have settled the policies.

8-54 (b) The information required under Subsection (a) is
 8-55 limited to only those transactions in which the insured is a
 8-56 resident of this state and may not include individual transaction
 8-57 data regarding the business of life settlements or information if
 8-58 there is a reasonable basis to find that the information could be
 8-59 used to identify the owner or the insured.

8-60 (c) A provider that wilfully fails to file an annual
 8-61 statement as required in this section, or wilfully fails to reply
 8-62 not later than the 30th day after the date the provider receives a
 8-63 written inquiry from the department about the filing of the annual
 8-64 statement, shall, in addition to other penalties provided by this
 8-65 chapter, after notice and opportunity for hearing be subject to a
 8-66 penalty of up to \$250 for each day of delay, not to exceed \$25,000 in
 8-67 the aggregate, for the failure to file or respond.

8-68 (d) Except as otherwise allowed or required by law, a
 8-69 provider, broker, insurance company, insurance agent, information

9-1 bureau, rating agency or company, or any other person with actual
 9-2 knowledge of an insured's identity, may not disclose the identity
 9-3 of an insured or information that there is a reasonable basis to
 9-4 believe could be used to identify the insured or the insured's
 9-5 financial or medical information to any other person unless the
 9-6 disclosure is:

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

9-10 (2) necessary to effectuate the sale of a life
 9-11 settlement contract, or interests in the contract, as an
 9-12 investment, provided the sale is conducted in accordance with
 9-13 applicable state and federal securities law and provided further
 9-14 that the owner and the insured have both provided prior written
 9-15 consent to the disclosure;

9-16 (3) provided in response to an investigation or
 9-17 examination by the commissioner or another governmental officer or
 9-18 agency or under Section 1111A.018;

9-19 (4) a term or condition of the transfer of a policy by
 9-20 one provider to another provider, in which case the receiving
 9-21 provider shall comply with the confidentiality requirements of this
 9-22 subsection;

9-23 (5) necessary to allow the provider or broker or the
 9-24 provider's or broker's authorized representative to make contact
 9-25 for the purpose of determining health status provided that in this
 9-26 subdivision, authorized representative does not include a person
 9-27 who has or may have a financial interest in the settlement contract
 9-28 other than a provider, licensed broker, financing entity, related
 9-29 provider trust, or special purpose entity and that the provider or
 9-30 broker requires the authorized representative to agree in writing
 9-31 to adhere to the privacy provisions of this chapter; or

9-32 (6) required to purchase stop loss coverage.

9-33 (e) Nonpublic personal information solicited or obtained in
 9-34 connection with a proposed or actual life settlement contract is
 9-35 subject to the provisions applicable to financial institutions
 9-36 under the federal Gramm-Leach-Bliley Act (Pub. L. No. 106-102), and
 9-37 any other state and federal laws relating to confidentiality of
 9-38 nonpublic personal information.

9-39 Sec. 1111A.007. EXAMINATION. (a) The commissioner may,
 9-40 when the commissioner finds it reasonably necessary to protect the
 9-41 interests of the public, examine the business and affairs of a
 9-42 license holder or applicant for a license. The commissioner may
 9-43 order a license holder or applicant to produce any records, books,
 9-44 files, or other information reasonably necessary to determine
 9-45 whether the license holder or applicant is acting or has acted in
 9-46 violation of the law or otherwise contrary to the interests of the
 9-47 public. The expenses incurred in conducting an examination must be
 9-48 paid by the license holder or applicant.

9-49 (b) In lieu of an examination under this chapter of any
 9-50 foreign or alien license holder licensed in this state, the
 9-51 commissioner may, at the commissioner's discretion, accept an
 9-52 examination report on the license holder as prepared by the
 9-53 commissioner for the license holder's state of domicile or
 9-54 port-of-entry state.

9-55 (c) Names of and individual identification data for an owner
 9-56 or insured is private and confidential information and may not be
 9-57 disclosed by the commissioner unless required by law.

9-58 (d) Records of all consummated transactions and life
 9-59 settlement contracts must be maintained by the provider until the
 9-60 third anniversary of the date of the death of the insured and must
 9-61 be available to the commissioner for inspection during reasonable
 9-62 business hours.

9-63 (e) If the commissioner determines that an examination
 9-64 should be conducted, the commissioner shall issue an examination
 9-65 warrant appointing one or more examiners to perform the examination
 9-66 and instructing the examiners of the scope of the examination. In
 9-67 conducting the examination, an examiner shall use methods common to
 9-68 the examination of a life settlement license holder and should use
 9-69 applicable guidelines and procedures set forth in an examiners'

10-1 handbook adopted by a national organization.

10-2 (f) Each officer, director, and agent of a license holder or
10-3 person from whom an examiner seeks information shall provide to the
10-4 examiners timely, convenient, and free access at all reasonable
10-5 hours at the license holder's or person's offices to all books,
10-6 records, accounts, papers, documents, assets, and computer or other
10-7 recordings relating to the property, assets, business, and affairs
10-8 of the license holder being examined. The officers, directors,
10-9 employees, and agents of the license holder or person shall, to the
10-10 extent possible, facilitate the examination and aid in the
10-11 examination. The refusal of a license holder, through an officer, a
10-12 director, an employee, or an agent, to submit to examination or to
10-13 comply with a reasonable written request of the commissioner is
10-14 grounds for suspension or refusal of, or nonrenewal of, any license
10-15 or authority held by the license holder to engage in the life
10-16 settlement business or other business subject to the commissioner's
10-17 jurisdiction. A proceeding for suspension, revocation, or refusal
10-18 of a license or authority shall be conducted as provided by Subtitle
10-19 B, Title 2.

10-20 (g) The commissioner has the power to issue subpoenas, to
10-21 administer oaths, and to examine under oath any person about any
10-22 matter relevant to the examination. If a person fails or refuses to
10-23 obey a subpoena, the commissioner may petition a court of competent
10-24 jurisdiction, and on proper showing, the court may enter an order
10-25 compelling the witness to appear and testify or to produce
10-26 documentary evidence.

10-27 (h) When making an examination under this chapter, the
10-28 commissioner may retain attorneys, appraisers, independent
10-29 actuaries, independent certified public accountants, or other
10-30 professionals and specialists as examiners, the reasonable cost of
10-31 which must be borne by the license holder that is the subject of the
10-32 examination.

10-33 (i) Nothing contained in this chapter limits the
10-34 commissioner's authority to terminate or suspend an examination in
10-35 order to pursue other legal or regulatory action. Findings of fact
10-36 and conclusions of law made in an examination are prima facie
10-37 evidence in a legal or regulatory action.

10-38 (j) An examination report must contain only facts appearing
10-39 on the books, from the testimony concerning the affairs of an
10-40 officer or agent or other person examined, and the conclusions and
10-41 recommendations that the examiners find must be reasonably
10-42 warranted from the facts.

10-43 (k) Not later than the 60th day after the date of the
10-44 examination is complete, the examiner in charge shall file with the
10-45 commissioner a verified written report of examination under oath.
10-46 On receipt of the verified report, the commissioner shall transmit
10-47 the report to the license holder examined, together with a notice
10-48 that affords the license holder a reasonable opportunity of not
10-49 more than 30 days after the date of the notice to make a written
10-50 submission on, or rebuttal to, any matter contained in the
10-51 examination report or to request a hearing on any matter in dispute.
10-52 The written submission or rebuttal is part of the report.

10-53 (l) If the commissioner determines that regulatory action
10-54 is appropriate as a result of an examination, the commissioner may
10-55 initiate any proceeding or action authorized by law.

10-56 (m) The name and individual identification data of an owner,
10-57 purchaser, and insured that is obtained by the department as a
10-58 result of an examination is confidential and may not be disclosed by
10-59 the commissioner, unless the disclosure is to another regulator or
10-60 is required by law.

10-61 (n) Except as otherwise provided in this chapter, all
10-62 preliminary and final examination reports, work papers, including
10-63 license holder work papers, recorded information, and documents
10-64 produced by, obtained by, or disclosed to the examiner, the
10-65 commissioner, or any other person in the course of an examination
10-66 under this chapter, or in the course of analysis or investigation by
10-67 the commissioner of the financial condition or market conduct of a
10-68 license holder are confidential and privileged, are not subject to
10-69 disclosure under Chapter 552, Government Code, are not subject to

11-1 subpoena, and are not subject to discovery or admissible in
 11-2 evidence in any private civil action. The commissioner may use the
 11-3 reports, papers, information, and documents in any regulatory or
 11-4 legal action brought as part of the commissioner's official duties.
 11-5 The license holder may have access to all papers, documents, and
 11-6 information used to make the report.

11-7 (o) An examiner may not be appointed by the commissioner if
 11-8 the examiner, either directly or indirectly, has a conflict of
 11-9 interest or is affiliated with the management of or owns a pecuniary
 11-10 interest in any person subject to examination under this chapter.
 11-11 This section does not automatically preclude an examiner from
 11-12 being:

11-13 (1) an owner;
 11-14 (2) an insured in a life settlement contract or
 11-15 insurance policy; or

11-16 (3) a beneficiary in an insurance policy that is
 11-17 proposed for a life settlement contract.

11-18 (p) Notwithstanding the requirements of Subsection (o), the
 11-19 commissioner may retain from time to time, on an individual basis, a
 11-20 qualified actuary, certified public accountant, or other similar
 11-21 individual who is independently practicing a profession, even
 11-22 though the person may from time to time be similarly employed or
 11-23 retained by a person subject to examination under this chapter.

11-24 Sec. 1111A.008. IMMUNITY FROM LIABILITY. (a) No cause of
 11-25 action shall arise nor shall any liability be imposed against the
 11-26 commissioner, the commissioner's authorized representatives, or
 11-27 any examiner appointed by the commissioner for a statement made or
 11-28 conduct performed in good faith while carrying out this chapter.

11-29 (b) No cause of action shall arise, nor shall any liability
 11-30 be imposed against any person for the act of communicating or
 11-31 delivering information to the commissioner or the commissioner's
 11-32 authorized representative or examiner pursuant to an examination
 11-33 made under this chapter, if the act of communication or delivery was
 11-34 performed in good faith and without fraudulent intent or the intent
 11-35 to deceive. This subsection does not abrogate or modify in any way
 11-36 any common law or statutory privilege or immunity enjoyed by any
 11-37 person identified in Subsection (a).

11-38 Sec. 1111A.009. INVESTIGATIVE AUTHORITY OF THE
 11-39 COMMISSIONER. The commissioner may investigate a suspected
 11-40 fraudulent life settlement act and a person engaged in the business
 11-41 of life settlements.

11-42 Sec. 1111A.010. COST OF EXAMINATIONS. The reasonable and
 11-43 necessary cost of an examination under this chapter is to be
 11-44 assessed against the person being examined in accordance with
 11-45 Section 751.208.

11-46 Sec. 1111A.011. ADVERTISING. (a) A broker or provider
 11-47 licensed pursuant to this chapter may conduct or participate in an
 11-48 advertisement in this state. The advertisement must comply with
 11-49 all advertising and marketing laws under Chapter 541 and rules
 11-50 adopted by the commissioner that are applicable to life insurers or
 11-51 to license holders under this chapter.

11-52 (b) Advertisements shall be accurate, truthful, and not
 11-53 misleading in fact or by implication.

11-54 (c) A person may not:

11-55 (1) directly market, advertise, solicit, or otherwise
 11-56 promote the purchase of a policy for the sole purpose of or with an
 11-57 emphasis on settling the policy; or

11-58 (2) use the words "free," "no cost," or words of
 11-59 similar import in the marketing, advertising, or soliciting of, or
 11-60 otherwise promoting, the purchase of a policy.

11-61 Sec. 1111A.012. DISCLOSURES TO OWNERS. (a) A provider
 11-62 shall provide in writing, in a separate document that is signed by
 11-63 the owner and provider, the following information to the owner not
 11-64 later than the date the life settlement contract is signed by all
 11-65 parties:

11-66 (1) the fact that possible alternatives to life
 11-67 settlement contracts exist, including accelerated benefits offered
 11-68 by the issuer of the life insurance policy;

11-69 (2) the fact that some or all of the proceeds of a life

12-1 settlement contract may be taxable and that assistance should be
12-2 sought from a professional tax advisor;
12-3 (3) the fact that the proceeds from a life settlement
12-4 contract could be subject to the claims of creditors;
12-5 (4) the fact that receipt of proceeds from a life
12-6 settlement contract may adversely affect the recipients'
12-7 eligibility for public assistance or other government benefits or
12-8 entitlements and that advice should be obtained from the
12-9 appropriate agency;
12-10 (5) the fact that the owner has a right to terminate a
12-11 life settlement contract within 15 days of the date the contract is
12-12 executed by all parties and the owner has received the disclosures
12-13 described in this section, that rescission, if exercised by the
12-14 owner, is effective only if both notice of the rescission is given
12-15 and the owner repays all proceeds and any premiums, loans, and loan
12-16 interest paid on account of the provider during the rescission
12-17 period, and that if the insured dies during the rescission period,
12-18 the contract is considered rescinded subject to repayment by the
12-19 owner or the owner's estate of all proceeds and any premiums, loans,
12-20 and loan interest to the provider;
12-21 (6) the fact that proceeds will be sent to the owner
12-22 within three business days after the provider has received the
12-23 insurer or group administrator's acknowledgement that ownership of
12-24 the policy or interest in the certificate has been transferred and
12-25 the beneficiary has been designated in accordance with the terms of
12-26 the life settlement contract;
12-27 (7) the fact that entering into a life settlement
12-28 contract may cause the owner to forfeit other rights or benefits,
12-29 including conversion rights and waiver of premium benefits that may
12-30 exist under the policy or certificate of a group policy, and that
12-31 assistance should be sought from a professional financial advisor;
12-32 (8) the amount and method of calculating the
12-33 compensation, including anything of value, paid or given, or to be
12-34 paid or given, to the broker, or any other person acting for the
12-35 owner in connection with the transaction;
12-36 (9) the date by which the funds will be available to
12-37 the owner and the identity of the transmitter of the funds;
12-38 (10) the fact that the commissioner requires delivery
12-39 of a buyer's guide or a similar consumer advisory package in the
12-40 form prescribed by the commissioner to owners during the
12-41 solicitation process;
12-42 (11) the following language: "All medical, financial,
12-43 or personal information solicited or obtained by a provider or
12-44 broker about an insured, including the insured's identity or the
12-45 identity of family members or a spouse or a significant other, may
12-46 be disclosed as necessary to effect the life settlement contract
12-47 between the owner and provider. If you are asked to provide this
12-48 information, you will be asked to consent to the disclosure. The
12-49 information may be provided to someone who buys the policy or
12-50 provides funds for the purchase. You may be asked to renew your
12-51 permission to share information every two years.";
12-52 (12) the fact that the commissioner requires providers
12-53 and brokers to print separate signed fraud warnings on the
12-54 applications and on the life settlement contracts as follows: "Any
12-55 person who knowingly presents false information in an application
12-56 for insurance or a life settlement contract is guilty of a crime and
12-57 may be subject to fines and confinement in prison.";
12-58 (13) the fact that the insured may be contacted by
12-59 either the provider or broker or an authorized representative of
12-60 the provider or broker for the purpose of determining the insured's
12-61 health status or to verify the insured's address and that this
12-62 contact is limited to once every three months if the insured has a
12-63 life expectancy of more than one year, and not more than once per
12-64 month if the insured has a life expectancy of one year or less;
12-65 (14) the affiliation, if any, between the provider and
12-66 the issuer of the insurance policy to be settled;
12-67 (15) that a broker represents exclusively the owner,
12-68 and not the insurer or the provider or any other person, and owes a
12-69 fiduciary duty to the owner, including a duty to act according to

13-1 the owner's instructions and in the best interest of the owner;
 13-2 (16) the name, address, and telephone number of the
 13-3 provider;
 13-4 (17) the name, business address, and telephone number
 13-5 of the independent third party escrow agent, and the fact that the
 13-6 owner may inspect or receive copies of the relevant escrow or trust
 13-7 agreements or documents; and
 13-8 (18) the fact that a change of ownership could in the
 13-9 future limit the insured's ability to purchase future insurance on
 13-10 the insured's life because there is a limit to how much coverage
 13-11 insurers will issue on one life.
 13-12 (b) The written disclosures described by Subsection (a)
 13-13 must be conspicuously displayed in a life settlement contract
 13-14 furnished to the owner by a provider, including any affiliations or
 13-15 contractual arrangements between the provider and the broker.
 13-16 (c) A broker shall provide the owner and the provider with
 13-17 at least the following disclosures not later than the date on which
 13-18 the life settlement contract is signed by all parties and which must
 13-19 be conspicuously displayed in the life settlement contract or in a
 13-20 separate document signed by the owner:
 13-21 (1) the name, business address, and telephone number
 13-22 of the broker;
 13-23 (2) a full, complete, and accurate description of all
 13-24 the offers, counter-offers, acceptances, and rejections relating
 13-25 to the proposed life settlement contract;
 13-26 (3) a written disclosure of any affiliations or
 13-27 contractual arrangements between the broker and any person making
 13-28 an offer in connection with the proposed life settlement contract;
 13-29 (4) the name of each broker who receives compensation
 13-30 and the amount of compensation, including anything of value, paid
 13-31 or given to the broker in connection with the life settlement
 13-32 contract; and
 13-33 (5) a complete reconciliation of the gross offer or
 13-34 bid by the provider to the net amount of proceeds or value to be
 13-35 received by the owner.
 13-36 (d) For the purpose of this section, "gross offer or bid"
 13-37 means the total amount or value offered by the provider for the
 13-38 purchase of one or more life insurance policies, inclusive of
 13-39 commissions and fees.
 13-40 (e) The failure to provide the disclosures or rights
 13-41 described in this section is an unfair method of competition or an
 13-42 unfair or deceptive act or practice described by Section 1111A.027.
 13-43 Sec. 1111A.013. DISCLOSURE TO INSURER. (a) Without
 13-44 limiting the ability of an insurer to assess the insurability of a
 13-45 policy applicant and to determine whether to issue the policy, and
 13-46 in addition to other questions an insurance carrier may lawfully
 13-47 pose to a life insurance applicant, an insurer may inquire in the
 13-48 application for insurance whether the proposed owner intends to pay
 13-49 premiums with the assistance of financing from a lender that will
 13-50 use the policy as collateral to support the financing.
 13-51 (b) If, as described in Sections 1111A.002(11) and (11-A),
 13-52 the loan provides funds that can be used for a purpose other than
 13-53 paying for the premiums, costs, and expenses associated with
 13-54 obtaining and maintaining the life insurance policy and loan, and
 13-55 notwithstanding any other law, the application must be rejected as
 13-56 a violation of Section 1111A.017.
 13-57 (c) If the financing does not violate Section 1111A.017 as
 13-58 described by Subsection (b), the insurance carrier:
 13-59 (1) may make disclosures, not later than the date of
 13-60 the delivery of the policy, to the applicant and the insured, either
 13-61 on the application or on an amendment to the application that
 13-62 include the following or substantially similar statements:
 13-63 "If you have entered into a loan arrangement in which the policy is
 13-64 used as collateral, and the policy does change ownership at some
 13-65 point in the future in satisfaction of the loan, the following may
 13-66 be true:
 13-67 (A) a change of ownership could lead to a
 13-68 stranger owning an interest in the insured's life;
 13-69 (B) a change of ownership could in the future

14-1 limit your ability to purchase future insurance on the insured's
 14-2 life because there is a limit to how much coverage insurers will
 14-3 issue on one life;

14-4 (C) should there be a change of ownership and you
 14-5 wish to obtain more insurance coverage on the insured's life in the
 14-6 future, the insured's higher issue age, a change in health status,
 14-7 or other factors may reduce the ability to obtain coverage or may
 14-8 result in significantly higher premiums; and

14-9 (D) you should consult a professional advisor,
 14-10 since a change in ownership in satisfaction of the loan may result
 14-11 in tax consequences to the owner, depending on the structure of the
 14-12 loan.";

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

14-15 (A) "I have not entered into any agreement or
 14-16 arrangement providing for the future sale of this life insurance
 14-17 policy";

14-18 (B) "My loan arrangement for this policy provides
 14-19 funds sufficient to pay for some or all of the premiums, costs, and
 14-20 expenses associated with obtaining and maintaining my life
 14-21 insurance policy, but I have not entered into any agreement by which
 14-22 I am to receive consideration in exchange for procuring this
 14-23 policy"; and

14-24 (C) "The borrower has an insurable interest in
 14-25 the insured."

14-26 Sec. 1111A.014. GENERAL RULES. (a) Before entering into a
 14-27 life settlement contract with an owner of a policy with respect to
 14-28 which the insured is terminally or chronically ill, the provider
 14-29 must obtain:

14-30 (1) if the owner is the insured, a written statement
 14-31 from a licensed attending physician that the owner is of sound mind
 14-32 and under no constraint or undue influence to enter into a
 14-33 settlement contract; and

14-34 (2) a document in which the insured consents to the
 14-35 release of medical records to a provider, settlement broker, or
 14-36 insurance agent and, if the policy was issued less than two years
 14-37 after the date of application for a settlement contract, to the
 14-38 insurance company that issued the policy.

14-39 (b) An insurer shall respond to a request for verification
 14-40 of coverage submitted by a provider, settlement broker, or life
 14-41 insurance agent not later than the 30th calendar day after the date
 14-42 the request is received. The request for verification of coverage
 14-43 must be made on a form approved by the commissioner. The insurer
 14-44 shall complete and issue the verification of coverage or indicate
 14-45 in which respects the insurer is unable to respond. In the
 14-46 response, the insurer shall indicate whether at the time of the
 14-47 response, based on the medical evidence and documents provided, the
 14-48 insurer intends to pursue an investigation about the validity of
 14-49 the insurance contract.

14-50 (c) On or before the date of execution of the life
 14-51 settlement contract, the provider shall obtain a witnessed document
 14-52 in which the owner consents to the settlement contract, represents
 14-53 that the owner has a full and complete understanding of the
 14-54 settlement contract and of the benefits of the policy, acknowledges
 14-55 that the owner is entering into the settlement contract freely and
 14-56 voluntarily, and, for persons with a terminal or chronic illness or
 14-57 condition, acknowledges that the insured has a terminal or chronic
 14-58 illness and that the terminal or chronic illness or condition was
 14-59 diagnosed after the policy was issued.

14-60 (d) The insurer may not unreasonably delay effecting change
 14-61 of ownership or beneficiary with any life settlement contract
 14-62 lawfully entered into in this state or with a resident of this
 14-63 state.

14-64 (e) If a settlement broker or life insurance producer
 14-65 performs any of these activities required of the provider, the
 14-66 provider is deemed to have fulfilled the requirements of this
 14-67 section.

14-68 (f) If a broker performs the verification of coverage
 14-69 activities required of the provider, the provider is deemed to have

15-1 fulfilled the requirements of Section 1111A.012.

15-2 (g) Not later than the 20th day after the date that an owner
15-3 executes the life settlement contract, the provider shall give
15-4 written notice to the insurer that issued that insurance policy
15-5 that the policy has become subject to a life settlement contract.
15-6 The notice shall be accompanied by the documents required by
15-7 Section 1111A.013(c).

15-8 (h) Medical information solicited or obtained by a license
15-9 holder is subject to the applicable provision of state law relating
15-10 to confidentiality of medical information, if not otherwise
15-11 provided in this chapter.

15-12 (i) A life settlement contract entered into in this state
15-13 must provide that the owner may rescind the contract on or before 15
15-14 days after the date the contract is executed by all parties to the
15-15 contract. Rescission, if exercised by the owner, is effective only
15-16 if notice of the rescission is given and the owner repays all
15-17 proceeds and any premiums, loans, and loan interest paid on account
15-18 of the provider within the rescission period. If the insured dies
15-19 during the rescission period, the contract is rescinded subject to
15-20 repayment by the owner or the owner's estate of all proceeds and any
15-21 premiums, loans, and loan interest to the provider.

15-22 (j) Not later than the third business day after the date the
15-23 provider receives from the owner the documents to effect the
15-24 transfer of the insurance policy, the provider shall pay the
15-25 proceeds of the settlement into an escrow or trust account managed
15-26 by a trustee or escrow agent in a state or federally chartered
15-27 financial institution pending acknowledgement of the transfer by
15-28 the issuer of the policy. The trustee or escrow agent shall
15-29 transfer to the owner the proceeds due to the owner not later than
15-30 the third business day after the date the trustee or escrow officer
15-31 receives from the insurer acknowledgment of the transfer of the
15-32 insurance policy.

15-33 (k) Failure to tender the life settlement contract proceeds
15-34 to the owner on or before the date disclosed to the owner renders
15-35 the contract voidable by the owner for lack of consideration until
15-36 the time the proceeds are tendered to and accepted by the owner. A
15-37 failure to give written notice of the right of rescission under this
15-38 subsection tolls the right of rescission for 30 days after the date
15-39 the written notice of the right of rescission has been given.

15-40 (l) A fee paid by a provider, an owner, or other person to a
15-41 broker in exchange for services provided to the owner pertaining to
15-42 a life settlement contract must be computed as a percentage of the
15-43 offer obtained, not the face value of the policy. Nothing in this
15-44 section prohibits a broker from voluntarily reducing the broker's
15-45 fee to less than a percentage of the offer obtained.

15-46 (m) A broker shall disclose to the owner anything of value
15-47 paid or given to a broker that relates to a life settlement
15-48 contract.

15-49 (n) A person, at any time prior to or at the time of the
15-50 application for, or issuance of, a policy, or during a two-year
15-51 period beginning on the date of issuance of the policy, may not
15-52 enter into a life settlement contract regardless of the date the
15-53 compensation is to be provided and regardless of the date the
15-54 assignment, transfer, sale, devise, bequest, or surrender of the
15-55 policy is to occur. The time covered under a group policy must be
15-56 calculated without regard to a change in insurance carriers,
15-57 provided the coverage has been continuous and under the same group
15-58 sponsorship. This prohibition does not apply if:

15-59 (1) the owner certifies to the provider that the
15-60 policy was issued on the owner's exercise of conversion rights
15-61 arising out of a group or individual policy, provided the total of
15-62 the time covered under the conversion policy plus the time covered
15-63 under the prior policy is at least 24 months; or

15-64 (2) the owner submits independent evidence to the
15-65 provider that one or more of the following conditions have been met
15-66 during the two-year period described by this subsection:

15-67 (A) the owner or insured is terminally or
15-68 chronically ill;

15-69 (B) the owner or insured disposes of the owner's

16-1 or insured's ownership interests in a closely held corporation,
 16-2 pursuant to the terms of a buyout or other similar agreement in
 16-3 effect at the time the insurance policy was initially issued;

16-4 (C) the owner's spouse dies;

16-5 (D) the owner divorces the owner's spouse;

16-6 (E) the owner retires from full-time employment;

16-7 (F) the owner becomes physically or mentally

16-8 disabled and a physician determines that the disability prevents

16-9 the owner from maintaining full-time employment; or

16-10 (G) a final order, judgment, or decree is entered

16-11 by a court of competent jurisdiction, on the application of a

16-12 creditor of the owner, adjudicating the owner bankrupt or

16-13 insolvent, or approving a petition seeking reorganization of the

16-14 owner or appointing a receiver, trustee, or liquidator to all or a

16-15 substantial part of the owner's assets.

16-16 (o) Copies of the independent evidence described by

16-17 Subsection (n)(2) must be submitted to the insurer at the time the

16-18 provider submits a request to the insurer for verification of

16-19 coverage. The copies must be accompanied by a letter of attestation

16-20 from the provider that the copies are true and correct copies of the

16-21 documents received by the provider. This section does not prohibit

16-22 an insurer from exercising its right to contest the validity of a

16-23 policy.

16-24 (p) If the provider submits to the insurer a copy of

16-25 independent evidence provided for Subsection (n)(2)(A) at the time

16-26 the provider submits a request to the insurer to effect the transfer

16-27 of the policy to the provider, the copy is deemed to establish that

16-28 the settlement contract satisfies the requirements of this section.

16-29 Sec. 1111A.015. AUTHORITY TO ADOPT RULES. The commissioner

16-30 may adopt rules implementing this chapter and regulating the

16-31 activities and relationships of providers, brokers, insurers, and

16-32 their authorized representatives.

16-33 Sec. 1111A.016. CONFLICT OF LAWS. (a) If there is more

16-34 than one owner on a single policy, and the owners are residents of

16-35 different states, the life settlement contract is governed by the

16-36 law of the state in which the owner having the largest percentage

16-37 ownership resides or, if the owners hold equal ownership, the state

16-38 of residence of one owner agreed on in writing by all of the owners.

16-39 The law of the state of the insured shall govern in the event that

16-40 equal owners fail to agree in writing on a state of residence for

16-41 jurisdictional purposes.

16-42 (b) A provider licensed in this state who enters into a life

16-43 settlement contract with an owner who is a resident of another state

16-44 that has enacted statutes or adopted rules governing life

16-45 settlement contracts is governed in the effectuation of that life

16-46 settlement contract by the statutes and rules of the owner's state

16-47 of residence. If the state in which the owner is a resident has not

16-48 enacted statutes or adopted rules governing life settlement

16-49 contracts, the provider shall give the owner notice that neither

16-50 state regulates the transaction on which the owner is entering. For

16-51 transactions in those states, however, the provider shall maintain

16-52 all records required by this chapter if the transactions were

16-53 executed in this state. The forms used in those states need not be

16-54 approved by the department.

16-55 (c) If there is a conflict in the laws that apply to an owner

16-56 and a purchaser in any individual transaction, the laws of the state

16-57 that apply to the owner shall take precedence and the provider shall

16-58 comply with those laws.

16-59 Sec. 1111A.017. PROHIBITED PRACTICES. (a) A person may

16-60 not:

16-61 (1) enter into a life settlement contract if the

16-62 person knows or should have known that the life insurance policy was

16-63 obtained by means of a false, deceptive, or misleading application

16-64 for the policy;

16-65 (2) engage in a transaction, practice, or course of

16-66 business if the person knows or reasonably should have known that

16-67 the intent of engaging in the transaction, practice, or course of

16-68 business is to avoid the notice requirements of this chapter;

16-69 (3) engage in a fraudulent act or practice in

17-1 connection with a transaction relating to any settlement involving
 17-2 an owner who is a resident of this state;

17-3 (4) issue, solicit, market, or otherwise promote the
 17-4 purchase of an insurance policy for the sole purpose of, or with an
 17-5 emphasis on, settling the policy;

17-6 (5) if providing premium financing, receive any
 17-7 proceeds, fee, or other consideration from the policy or owner in
 17-8 addition to the amounts required to pay principal, interest, and
 17-9 any reasonable costs or expenses incurred by the lender or borrower
 17-10 in connection with the premium finance agreement, except in event
 17-11 of a default, unless either the default on the loan or transfer of
 17-12 the policy occurs pursuant to an agreement or understanding with
 17-13 any other person for the purpose of evading regulation under this
 17-14 chapter;

17-15 (6) with respect to any settlement contract or
 17-16 insurance policy and to a broker, knowingly solicit an offer from,
 17-17 effectuate a life settlement contract with, or make a sale to any
 17-18 provider, financing entity, or related provider trust that is
 17-19 controlling, controlled by, or under common control with the broker
 17-20 unless the relationship is fully disclosed to the owner;

17-21 (7) with respect to any life settlement contract or
 17-22 insurance policy and a provider, knowingly enter into a life
 17-23 settlement contract with an owner if, in connection with the life
 17-24 settlement contract, anything of value will be paid to a broker that
 17-25 is controlling, controlled by, or under common control with the
 17-26 provider or the financing entity or related provider trust that is
 17-27 involved in such settlement contract, unless the relationship is
 17-28 fully disclosed to the owner;

17-29 (8) with respect to a provider, enter into a life
 17-30 settlement contract unless the life settlement promotional,
 17-31 advertising, and marketing materials, as may be prescribed by rule,
 17-32 have been filed with the commissioner, provided that in no event may
 17-33 any marketing materials expressly reference that the insurance is
 17-34 free for any period of time; or

17-35 (9) with respect to any life insurance agent,
 17-36 insurance company, broker, or provider, make any statement or
 17-37 representation to the applicant or policyholder in connection with
 17-38 the sale or financing of a life insurance policy to the effect that
 17-39 the insurance is free or without cost to the policyholder for any
 17-40 period of time unless provided in the policy.

17-41 (b) A violation of this section is a fraudulent life
 17-42 settlement act.

17-43 Sec. 1111A.018. FRAUD PREVENTION AND CONTROL. (a) A
 17-44 person may not commit a fraudulent life settlement act.

17-45 (b) A person may not knowingly or intentionally interfere
 17-46 with the enforcement of this chapter or an investigation of a
 17-47 suspected or actual violation of this chapter.

17-48 (c) A person in the business of life settlements may not
 17-49 knowingly or intentionally permit a person convicted of a felony
 17-50 involving dishonesty or breach of trust to participate in the
 17-51 business of life settlements.

17-52 (d) A life settlement contract and an application for a life
 17-53 settlement contract, regardless of the form of transmission, must
 17-54 contain the following, or a substantially similar, statement: "Any
 17-55 person who knowingly presents false information in an application
 17-56 for insurance or a life settlement contract is guilty of a crime and
 17-57 may be subject to fines and confinement in prison."

17-58 (e) The failure to include a statement as required in
 17-59 Subsection (d) is not a defense in any prosecution for a fraudulent
 17-60 life settlement act.

17-61 Sec. 1111A.019. MANDATORY REPORTING OF FRAUDULENT LIFE
 17-62 SETTLEMENT ACTS. A person engaged in the business of life
 17-63 settlements who has knowledge or a reasonable belief that a
 17-64 fraudulent life settlement act is being, will be, or has been
 17-65 committed shall provide to the commissioner the information
 17-66 required by, and in a manner prescribed by, the commissioner.

17-67 Sec. 1111A.020. VOLUNTARY REPORTING. Any person, other
 17-68 than a person described by Section 1111A.019, who has knowledge or a
 17-69 reasonable belief that a fraudulent life settlement act is being,

18-1 will be, or has been committed may provide to the commissioner the
 18-2 information required by, and in a manner prescribed by, the
 18-3 commissioner.

18-4 Sec. 1111A.021. IMMUNITY FROM LIABILITY. (a) No civil
 18-5 liability shall be imposed on and no cause of action arises from a
 18-6 person furnishing information about a suspected, anticipated, or
 18-7 completed fraudulent life settlement act or a suspected or
 18-8 completed fraudulent insurance act if the information is provided
 18-9 to or received from:

18-10 (1) the commissioner or an employee, agent, or
 18-11 representative of the commissioner;

18-12 (2) a federal, state, or local law enforcement or
 18-13 regulatory official or an employee, agent, or representative of the
 18-14 official;

18-15 (3) a person involved in the prevention and detection
 18-16 of a fraudulent life settlement act or that person's employee,
 18-17 agent, or representative;

18-18 (4) a regulatory body overseeing life insurance, life
 18-19 settlements, securities, or investment fraud or an employee, agent,
 18-20 or representative of that body;

18-21 (5) the life insurer that issued the life insurance
 18-22 policy covering the life of the insured; or

18-23 (6) the license holder and any employee, agent, or
 18-24 representative of the license holder.

18-25 (b) Subsection (a) does not apply to a statement made with
 18-26 actual malice. In an action brought against a person for filing a
 18-27 report or furnishing other information concerning a fraudulent life
 18-28 settlement act or a fraudulent insurance act, the party bringing
 18-29 the action shall plead specifically any allegation that Subsection
 18-30 (a) does not apply because the person filing the report or
 18-31 furnishing the information did so with actual malice.

18-32 (c) This section does not abrogate or modify common law or
 18-33 statutory privileges or immunities enjoyed by a person described in
 18-34 Subsection (a).

18-35 Sec. 1111A.022. CONFIDENTIALITY. (a) The documents and
 18-36 evidence provided as described by Section 1111A.021 or obtained by
 18-37 the commissioner in an investigation of a suspected or an actual
 18-38 fraudulent life settlement act are privileged and confidential, are
 18-39 not a public record, and are not subject to discovery or subpoena in
 18-40 a civil or criminal action.

18-41 (b) Subsection (a) does not prohibit release by the
 18-42 commissioner of documents and evidence obtained in an investigation
 18-43 of a suspected or an actual fraudulent life settlement act:

18-44 (1) in an administrative or judicial proceeding to
 18-45 enforce a provision of this code or another insurance law of this
 18-46 state;

18-47 (2) to a federal, state, or local law enforcement or
 18-48 regulatory agency, to an organization established for the purpose
 18-49 of detecting and preventing a fraudulent life settlement act, or to
 18-50 the National Association of Insurance Commissioners; or

18-51 (3) at the discretion of the commissioner, to a person
 18-52 in the business of life settlements that is aggrieved by a
 18-53 fraudulent life settlement act.

18-54 (c) Release of documents and evidence under Subsection (b)
 18-55 does not abrogate or modify the privilege granted in Subsection
 18-56 (a).

18-57 Sec. 1111A.023. OTHER LAW ENFORCEMENT OR REGULATORY
 18-58 AUTHORITY. This chapter does not:

18-59 (1) preempt the authority or relieve the duty of
 18-60 another law enforcement or regulatory agency to investigate,
 18-61 examine, and prosecute a suspected violation of law;

18-62 (2) preempt, supersede, or limit any provision of any
 18-63 state securities law or any rule, order, or notice issued under the
 18-64 law;

18-65 (3) prevent or prohibit a person from disclosing
 18-66 voluntarily information concerning life settlement fraud to a law
 18-67 enforcement or regulatory agency other than the department; or

18-68 (4) limit the powers granted by the laws of this state
 18-69 to the commissioner or an insurance fraud unit to investigate and

19-1 examine a possible violation of law and to take appropriate action
 19-2 against wrongdoers.

19-3 Sec. 1111A.024. LIFE SETTLEMENT ANTIFRAUD INITIATIVES.

19-4 (a) A provider or broker shall implement antifraud initiatives
 19-5 reasonably calculated to detect, prosecute, and prevent fraudulent
 19-6 life settlement acts. At the discretion of the commissioner, the
 19-7 commissioner may order, or a license holder may request and the
 19-8 commissioner may grant, a modification of the following required
 19-9 initiatives as necessary to ensure an effective antifraud program.
 19-10 A modification granted under this section may be more or less
 19-11 restrictive than the required initiatives so long as the
 19-12 modification may reasonably be expected to accomplish the purpose
 19-13 of this section. Antifraud initiatives must include:

19-14 (1) fraud investigators, who may be provider or broker
 19-15 employees or independent contractors; and

19-16 (2) an antifraud plan, which must be submitted to the
 19-17 commissioner and must include:

19-18 (A) a description of the procedures for detecting
 19-19 and investigating possible fraudulent life settlement acts and
 19-20 procedures for resolving material inconsistencies between medical
 19-21 records and insurance applications;

19-22 (B) a description of the procedures for reporting
 19-23 possible fraudulent life settlement acts to the commissioner;

19-24 (C) a description of the plan for antifraud
 19-25 education and training of underwriters and other personnel; and

19-26 (D) a description or chart outlining the
 19-27 organizational arrangement of the antifraud personnel who are
 19-28 responsible for the investigation and reporting of possible
 19-29 fraudulent life settlement acts and investigating unresolved
 19-30 material inconsistencies between medical records and insurance
 19-31 applications.

19-32 (b) An antifraud plan submitted to the commissioner is
 19-33 privileged and confidential, is not subject to disclosure under
 19-34 Chapter 552, Government Code, and is not subject to discovery or
 19-35 subpoena in a civil or criminal action.

19-36 Sec. 1111A.025. INJUNCTION; CIVIL REMEDIES; CEASE AND
 19-37 DESIST ORDERS. (a) In addition to the penalties and other

19-38 enforcement provisions of this chapter, if any person violates this
 19-39 chapter or any rule implementing this chapter, the commissioner may
 19-40 seek an injunction in a court in the county where the person resides
 19-41 or has a principal place of business and may apply for temporary and
 19-42 permanent orders that the commissioner determines necessary to
 19-43 restrain the person from further committing the violation.

19-44 (b) The commissioner may issue a cease and desist order
 19-45 against a person who violates any provision of this chapter, any
 19-46 rule or order adopted by the commissioner, or any written agreement
 19-47 entered into with the commissioner, in accordance with Chapter 82.

19-48 (c) If the commissioner finds that an action in violation of
 19-49 this chapter presents an immediate danger to the public and
 19-50 requires an immediate final order, the commissioner may issue an
 19-51 emergency cease and desist order under Chapter 83.

19-52 (d) The provisions of this chapter may not be waived by
 19-53 agreement. No choice of law provision may prevent the application
 19-54 of this chapter to any settlement.

19-55 Sec. 1111A.026. PENALTIES. (a) It is a violation of this
 19-56 chapter for any person, provider, broker, or any other party
 19-57 related to the business of life settlements to commit a fraudulent
 19-58 life settlement act.

19-59 (b) For criminal liability purposes, a person who commits a
 19-60 fraudulent life settlement act is guilty of committing insurance
 19-61 fraud and shall be subject to penalties under Chapter 35, Penal
 19-62 Code.

19-63 (c) Subtitle B, Title 2, applies to a violation of this
 19-64 chapter.

19-65 SECTION 1.02. (a) A provider lawfully transacting
 19-66 business in this state before the effective date of this Act may
 19-67 continue to do so pending approval or disapproval of the person's
 19-68 application for a license as long as the application is filed with
 19-69 the commissioner of insurance not later than 30 days after the date

20-1 of the publication by the commissioner of an application form and
20-2 instructions for licensure of providers. If the publication of the
20-3 application form and instructions is before the effective date of
20-4 this Act, then the filing of the application may not be later than
20-5 30 days after the effective date of this Act and the applicant may
20-6 use any form of life settlement contract that has been filed with
20-7 the commissioner pending approval, provided that the form is
20-8 otherwise in compliance with the provisions of this Act. A person
20-9 transacting business in this state under this provision shall
20-10 comply with all other requirements of this Act.

20-11 (b) A person who has lawfully negotiated a life settlement
20-12 contract between an owner residing in this state and one or more
20-13 providers for at least one year immediately before the effective
20-14 date of this Act may continue to do so pending approval or
20-15 disapproval of the person's application for a license provided that
20-16 the application is filed with the commissioner of insurance not
20-17 later than the 30th day after the date of publication by the
20-18 commissioner of an application form and instructions for licensure
20-19 of brokers. If the publication of the application form and
20-20 instructions is before the effective date of this Act, then the
20-21 filing of the application may not be later than the 30th day after
20-22 the effective date of this Act. Any person transacting business in
20-23 this state under this provision shall comply with all other
20-24 requirements of this Act.

20-25 ARTICLE 2. CONFORMING AMENDMENTS

20-26 SECTION 2.01. The heading to Chapter 1111, Insurance Code,
20-27 is amended to read as follows:

20-28 CHAPTER 1111. [~~LIFE AND VIATICAL SETTLEMENTS AND~~] ACCELERATED
20-29 TERM LIFE INSURANCE BENEFITS

20-30 SECTION 2.02. Subsection (a), Section 1551.255, Insurance
20-31 Code, is amended to read as follows:

20-32 (a) In this section, "viatical settlement" has the meaning
20-33 assigned to "life settlement contract" by Section 1111A.002
20-34 [~~1111.001~~].

20-35 SECTION 2.03. Subchapter A, Chapter 1111, Insurance Code,
20-36 is repealed.

20-37 ARTICLE 3. EFFECTIVE DATE

20-38 SECTION 3.01. This Act takes effect September 1, 2011.

20-39 * * * * *