

SENATE AMENDMENTS

2nd Printing

By: Eiland

H.B. No. 2277

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

(A) is fair and equitable to policyholders; and

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

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

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

1 (4) for a life annuity contract, to waive surrender
2 charges under the contract when the contract holder exchanges that
3 contract for another annuity contract issued by the same insurer or
4 an affiliate of the same insurer that is part of the same holding
5 company group if:

6 (A) the waiver and the exchange are fully,
7 fairly, and accurately explained to the contract holder in a manner
8 that is not deceptive or misleading; and

9 (B) the contract holder is given credit for the
10 time that the previous contract was held when determining any
11 surrender charges under the new contract;

12 (5) in connection with an accident and health
13 insurance policy, to provide to policy or certificate holders, in
14 addition to benefits under the terms of the insurance contract,
15 health-related services or health-related information, or to
16 disclose the availability of those additional services and
17 information to prospective policy or certificate holders; or

18 (6) in connection with a health maintenance
19 organization evidence of coverage, to provide to enrollees, in
20 addition to benefits under the evidence of coverage, health-related
21 services or health-related information, or to disclose the
22 availability of those additional services and information to
23 prospective enrollees or contract holders.

24 SECTION 2. Section 1114.004(a), Insurance Code, is amended
25 to read as follows:

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

- 1 (1) credit life insurance;
- 2 (2) group life insurance or group annuities for which
3 there is no direct solicitation of individuals by an agent;
- 4 (3) [~~group~~] life insurance and annuities used to fund
5 prepaid funeral benefits contracts, as defined by Chapter 154,
6 Finance Code;
- 7 (4) an application to:
 - 8 (A) exercise a contractual change or a conversion
9 privilege made to the insurer that issued the existing policy or
10 contract;
 - 11 (B) replace an existing policy or contract by the
12 insurer that issued the existing policy or contract under a program
13 filed with and approved by the commissioner; or
 - 14 (C) exercise a term conversion privilege among
15 corporate affiliates;
- 16 (5) life insurance proposed to replace life insurance
17 under a binding or conditional receipt issued by the same insurer;
- 18 (6) a policy or contract used to fund:
 - 19 (A) an employee pension benefit plan or employee
20 welfare benefit plan that is covered by the Employee Retirement
21 Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);
 - 22 (B) a plan described by Section 401(a), 401(k),
23 or 403(b), Internal Revenue Code of 1986, if established or
24 maintained by an employer;
 - 25 (C) a government or church plan, as defined by
26 Section 414, Internal Revenue Code of 1986, a government or church
27 welfare benefit plan, or a deferred compensation plan of a state or

1 local government or tax exempt organization described under Section
2 457, Internal Revenue Code of 1986; or

3 (D) a nonqualified deferred compensation
4 arrangement established or maintained by an employer or plan
5 sponsor;

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

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

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

14 (10) structured settlements.

15 SECTION 3. Subchapter B, Chapter 1114, Insurance Code, is
16 amended by adding Section 1114.057 to read as follows:

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

24 SECTION 4. Section 1115.001, Insurance Code, is amended to
25 read as follows:

26 Sec. 1115.001. PURPOSE. The purpose of this chapter is to
27 establish standards and procedures regarding recommendations made

1 to a consumer that result in a transaction involving annuity
2 products, and to require insurers to establish a system to
3 supervise those recommendations, to ensure that the insurance needs
4 and financial objectives of the consumer as of the time of the
5 transaction are appropriately addressed.

6 SECTION 5. Section 1115.002, Insurance Code, is amended by
7 amending Subdivisions (2), (3), and (4) and adding Subdivisions
8 (2-a), (5), and (6) to read as follows:

9 (2) "Annuity" means an [~~a fixed, variable, or modified~~
10 ~~guaranteed~~] annuity that is an insurance product under the laws of
11 this state that is individually solicited, whether the product is
12 classified as an individual annuity or group annuity.

13 (2-a) "Continuing education provider" means a person
14 authorized to offer continuing education courses under Chapter
15 4004.

16 (3) "Insurer" means a [~~an insurance~~] company
17 authorized to engage in the business of life insurance and
18 annuities in this state.

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

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

1 (A) lapsed, forfeited, surrendered or partially
2 surrendered, assigned to the replacing insurer, or otherwise
3 terminated;

4 (B) converted to reduced paid-up insurance,
5 continued as extended term insurance, or otherwise reduced in value
6 by the use of nonforfeiture benefits or other policy values;

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

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

11 (E) used in a financed purchase.

12 (6) "Suitability information" means information that
13 is reasonably appropriate to determine the suitability of a
14 recommendation, including the following:

15 (A) age;

16 (B) annual income;

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

19 (D) financial experience;

20 (E) financial objectives;

21 (F) intended use of the annuity;

22 (G) financial time horizon;

23 (H) existing assets, including investment and
24 life insurance holdings;

25 (I) liquidity needs;

26 (J) liquid net worth;

27 (K) risk tolerance; and

1 (L) tax status.

2 SECTION 6. Section 1115.003, Insurance Code, is amended to
3 read as follows:

4 Sec. 1115.003. APPLICABILITY; EXEMPTIONS. (a) This
5 chapter applies to any recommendation to purchase, replace, or
6 exchange an annuity that:

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

9 (2) results in the recommended purchase, replacement,
10 or exchange.

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

13 (1) direct response solicitations if there is no
14 recommendation based on information collected from the consumer
15 under this chapter; or

16 (2) contracts used to fund:

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

20 (B) a plan described by Section 401(a), 401(k),
21 403(b), 408(k), or 408(p), Internal Revenue Code of 1986, if
22 established or maintained by an employer;

23 (C) a government or church plan, as defined by
24 Section 414, Internal Revenue Code of 1986, a government or church
25 welfare benefit plan, or a deferred compensation plan of a state or
26 local government or tax exempt organization described under Section
27 457, Internal Revenue Code of 1986;

1 (D) a nonqualified deferred compensation
2 arrangement established or maintained by an employer or plan
3 sponsor;

4 (E) settlements of or assumptions of liabilities
5 associated with personal injury litigation or any dispute or claim
6 resolution process; or

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

9 SECTION 7. Section 1115.051, Insurance Code, is amended to
10 read as follows:

11 Sec. 1115.051. SUITABILITY OF ANNUITY PRODUCT REQUIRED.

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

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

22 (2) the consumer has been reasonably informed of
23 various features of the annuity, such as the potential surrender
24 period and the surrender charge, any potential tax penalty if the
25 consumer sells, exchanges, surrenders, or annuitizes the annuity,
26 mortality and expense fees, investment advisory fees, potential
27 charges for and features of riders, limitations on interest

1 returns, insurance and investment components, and market risk;

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

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

12 (5) in the case of an exchange or replacement of an
13 annuity, the exchange or replacement is suitable, including taking
14 into consideration whether the consumer:

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

20 (B) would benefit from product enhancements and
21 improvements; and

22 (C) has had another annuity exchange or
23 replacement, and in particular, an exchange or replacement in the
24 preceding 36 months.

25 (b) Before the execution of a purchase, exchange, or
26 replacement of an annuity resulting from a recommendation, an
27 agent, or an insurer if an agent is not involved, shall make

1 reasonable efforts to obtain the consumer's suitability
2 information.

3 (c) Except as permitted by Subsection (d), an insurer may
4 not issue an annuity recommended to a consumer unless the insurer
5 has a reasonable basis to believe the annuity is suitable based on
6 the consumer's suitability information.

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

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

12 (2) the agent or insurer does not make a
13 recommendation;

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

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

19 (e) An insurer's issuance of an annuity under circumstances
20 described by Subsection (d) must be reasonable under all
21 circumstances actually known to the insurer at the time the annuity
22 is issued.

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

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

27 (2) obtain a customer-signed statement documenting

1 the customer's refusal, if any, to provide suitability information;
2 and

3 (3) obtain a customer-signed statement acknowledging
4 that an annuity transaction is not recommended if the customer
5 decides to enter into an annuity transaction that is not based on
6 the agent's or insurer's recommendation. [~~Before the execution of a~~
7 ~~purchase or exchange of an annuity resulting from a recommendation,~~
8 ~~an agent, or the insurer if an agent is not involved, must make~~
9 ~~reasonable efforts to obtain:~~

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

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

12 [~~(B) the consumer's tax status, and~~

13 [~~(C) the consumer's investment objectives, and~~

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

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

24 [~~(1) investments and other insurance products, and~~

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

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

1 ~~consumer:~~

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

4 ~~[(2) fails to provide complete or accurate information~~
5 ~~on the request of the agent or insurer, or~~

6 ~~[(3) decides to enter into a transaction that is not~~
7 ~~based on a recommendation of the agent or insurer.~~

8 ~~[(d) An agent's or insurer's recommendation subject to~~
9 ~~Subsection (a) must be reasonable under all the circumstances~~
10 ~~actually known to the agent or insurer at the time of the~~
11 ~~recommendation.]~~

12 SECTION 8. Section 1115.052, Insurance Code, is amended to
13 read as follows:

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

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

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

27 (1) maintains reasonable procedures to inform the

1 insurer's agents of the requirements of this chapter and
2 incorporates the requirements of this chapter into relevant agent
3 training manuals [~~maintenance of written procedures~~]; [~~and~~]

4 (2) establishes standards for agent product training
5 and maintains reasonable procedures to require the insurer's agents
6 to comply with the requirements of Section 1115.056;

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

10 (4) maintains procedures to review each
11 recommendation electronically, physically, or otherwise before the
12 issuance of an annuity that:

13 (A) are designed to ensure that there is a
14 reasonable basis to determine that a recommendation is suitable;
15 and

16 (B) may:

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

19 (ii) be designed to require additional
20 review only of those transactions identified for additional review
21 by the selection criteria;

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

1 of the annuity; and

2 (6) annually provides a report to the insurer's senior
3 management, including to the senior manager responsible for audit
4 functions, that details a review, with appropriate testing,
5 reasonably designed to determine the effectiveness of the
6 supervision system, the exceptions found, and any corrective action
7 taken or recommended [~~periodic reviews of the insurer's or agent's~~
8 ~~records in a manner reasonably designed to assist in detecting and~~
9 ~~preventing violations of this chapter~~].

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

25 (1) annually obtaining certification that complies
26 with Section 1115.053 from a senior manager who represents that the
27 contracted function is properly performed [~~of the third party that~~

1 ~~the third party is performing the required functions~~]; and

2 (2) monitoring and, as appropriate, conducting audits
3 to ensure that the contracted function is properly performed
4 ~~[periodically selecting third parties, based on reasonable~~
5 ~~selection criteria, for a review to determine whether the third~~
6 ~~parties are performing the required functions]~~.

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

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

15 ~~[(1) review, or provide for review of, all~~
16 ~~agent-solicited transactions, or~~

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

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

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

24 (2) filing a complaint; or

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

26 SECTION 9. Section 1115.053, Insurance Code, is amended to
27 read as follows:

1 Sec. 1115.053. CERTIFICATION REQUIREMENTS. ~~[(a) On~~
2 ~~request by an insurer, an agent or independent agency that~~
3 ~~contracts with an insurer under Section 1115.052(d) shall promptly~~
4 ~~obtain a certification as described under Section 1115.052(d)(1) or~~
5 ~~give a clear statement that it is unable to meet the certification~~
6 ~~criteria.~~

7 ~~[(b)]~~ A person may not provide a certification under Section
8 1115.052(c)(1) ~~[1115.052(d)(1)]~~ unless the person:

9 (1) is a senior manager with responsibility for the
10 delegated functions; and

11 (2) has a reasonable basis for making the
12 certification.

13 SECTION 10. Section 1115.054, Insurance Code, is amended to
14 read as follows:

15 Sec. 1115.054. COMPLIANCE WITH CERTAIN NATIONAL STANDARDS.

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

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

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

4 (1) monitors the FINRA member broker-dealer using
5 information collected in the normal course of the insurer's
6 business; and

7 (2) provides to the FINRA member broker-dealer
8 information and reports that are reasonably appropriate to assist
9 the broker-dealer to maintain the broker-dealer's supervision
10 system.

11 SECTION 11. Section 1115.056, Insurance Code, is amended to
12 read as follows:

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

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

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

23 (c) The training required by Subsection (b) must be of a
24 length sufficient to qualify for at least four continuing education
25 credits, as determined by the commissioner in accordance with
26 Chapter 4004 and any rules adopted under that chapter, but may be
27 longer. The training required by Subsection (b) may be used to

1 satisfy the continuing education requirements under Subchapters B
2 and E, Chapter 4004, and is not in addition to the continuing
3 education requirements in Section 4004.202.

4 (d) The training required by Subsection (b) must include
5 information on the following topics:

6 (1) the types of annuities and various classifications
7 of annuities;

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

9 (3) how fixed, variable, and indexed annuity contract
10 provisions affect consumers;

11 (4) the application of income taxation of qualified
12 and nonqualified annuities;

13 (5) the primary uses of annuities; and

14 (6) appropriate sales practices, replacement, and
15 disclosure requirements.

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

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

26 (g) An annuity training course may be conducted and
27 completed by classroom or self-study methods in accordance with

1 Chapter 4004.

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

5 (i) The satisfaction of the training requirements of
6 another state that are substantially similar to the provisions of
7 this section is considered to satisfy the training requirements of
8 this section.

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

13 (1) obtaining a certificate of completion of the
14 training course or obtaining an appropriate report provided by the
15 department;

16 (2) using a department-sponsored database or vendor;
17 or

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

26 ~~[(b) The training required under Subsection (a) may be used~~
27 ~~to satisfy the continuing education requirements imposed under this~~

1 ~~code and rules adopted under this code for issuance of a license~~
2 ~~under this code.]~~

3 SECTION 12. Section 1115.101, Insurance Code, is amended to
4 read as follows:

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

9 (1) order:

10 (A) the [(1) an] insurer to take reasonable
11 appropriate corrective action for any consumer harmed by the
12 insurer or by the insurer's agent because of a violation of this
13 chapter; or

14 (B) a general agency, independent agency, or the
15 [(2) an] agent to take reasonably appropriate corrective action
16 for any consumer harmed by the agent's violation of this chapter;
17 and

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

24 SECTION 13. Section 1115.102(b), Insurance Code, is amended
25 to read as follows:

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

1 (1) corrective action for the consumer was taken
2 promptly by the agent or insurer after a violation was discovered;
3 or
4 (2) the violation was not part of a pattern or
5 practice.

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

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

19 (c) Except as provided by this section, Chapter 1115,
20 Insurance Code, as amended by this Act, applies only to a
21 recommendation to purchase, exchange, or replace an annuity
22 contract made on or after June 1, 2012, and any transaction arising
23 from that recommendation. A recommendation made before June 1,
24 2012, and a transaction arising from that recommendation are
25 governed by the law in effect immediately before the effective date
26 of this Act, and that law is continued in effect for that purpose.

27 (d) An insurance agent who becomes licensed under Chapter

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

12 SECTION 15. This Act takes effect September 1, 2011.

ADOPTED

3rd Reading

FLOOR AMENDMENT NO. 1

MAY 23 2011

BY:

Carona

Astley Spaw
Secretary of the Senate

1 Amend H.B. No. 2277 on ~~the floor~~ reading as follows:

2 (1) In the SECTION that adds Chapter 1111A, Insurance Code,
3 in added Section 1111A.002(18)(K), Insurance Code (Senate Floor
4 Amendment No. 1, by Carona, page 10, lines 13 - 14), strike
5 "Section 230.144A," and the substitute "Sections 230.501 and
6 230.144A, respectively,".

7 (2) In the SECTION that adds Chapter 1111A, Insurance Code,
8 in added Section 1111A.025(1), Insurance Code (Senate Floor
9 Amendment No. 1, by Carona, page 37, line 24), strike "541,".

ADOPTED

MAY 16 2011


Secretary of the Senate

FLOOR AMENDMENT NO. 1

BY: 

1 Amend H.B. No. 2277 (senate committee printing) by adding the
2 following appropriately numbered SECTIONS to the bill and
3 renumbering subsequent SECTIONS of the bill accordingly:

4 SECTION ____ Subtitle A, Title 7, Insurance Code, is
5 amended by adding Chapter 1111A to read as follows:

6 CHAPTER 1111A. LIFE SETTLEMENT CONTRACTS

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

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

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

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

1 or financial planner retained in the type of practice customarily
2 performed in a professional capacity to represent the owner whose
3 compensation is not paid directly or indirectly by the provider or
4 any other person, except the owner.

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

9 (4) "Chronically ill" means:

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

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

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

21 (5) "Financing entity" means an underwriter,
22 placement agent, lender, purchaser of securities, purchaser of a
23 policy or certificate from a provider, credit enhancer, or any
24 entity that has a direct ownership in a policy or certificate that
25 is the subject of a life settlement contract whose principal
26 activity related to the transaction is providing funds to effect
27 the life settlement contract or purchase of a policy, and who has an
28 agreement in writing with a provider to finance the acquisition of a
29 life settlement contract. The term does not include a
30 non-accredited investor or purchaser.

31 (6) "Financing transaction" means a transaction in

1 which a licensed provider obtains financing from a financing entity
2 including secured or unsecured financing, a securitization
3 transaction, or a securities offering that is either registered or
4 exempt from registration under federal and state securities law.

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

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

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

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

18 (b) the underwriting of a life
19 settlement contract or an insurance policy;

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

22 (d) premium paid on an insurance
23 policy;

24 (e) payment for and changes in
25 ownership or beneficiary made in accordance with the terms of a life
26 settlement contract or an insurance policy;

27 (f) the reinstatement or conversion
28 of an insurance policy;

29 (g) in the solicitation, offer to
30 enter into, or effectuation of a life settlement contract, or an
31 insurance policy;

1 (h) the issuance of written evidence
2 of life settlement contracts or insurance; or

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

6 (ii) failing to disclose to the insurer, if
7 the insurer has requested the disclosure, that the prospective
8 insured has undergone a life expectancy evaluation by any person or
9 entity other than the insurer or its authorized representatives in
10 connection with the issuance of the policy; or

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

13 (B) acts or omissions in the furtherance of a
14 fraud or to prevent the detection of a fraud, or acts or omissions
15 that permit an employee or an agent to:

16 (i) remove, conceal, alter, destroy, or
17 sequester from the commissioner the assets or records of a license
18 holder or another person engaged in the business of life
19 settlements;

20 (ii) misrepresent or conceal the financial
21 condition of a license holder, financing entity, insurer, or other
22 person;

23 (iii) transact the business of life
24 settlements in violation of laws requiring a license, certificate
25 of authority, or other legal authority for the transaction of the
26 business of life settlements;

27 (iv) file with the commissioner or the
28 chief insurance regulatory official of another jurisdiction a
29 document containing false information or concealing information
30 about a material fact;

31 (v) engage in embezzlement, theft,

1 misappropriation, or conversion of monies, funds, premiums,
2 credits, or other property of a provider, insurer, insured, owner,
3 insurance policy owner, or any other person engaged in the business
4 of life settlements or insurance;

5 (vi) knowingly and with intent to defraud,
6 enter into, broker, or otherwise deal in a life settlement
7 contract, the subject of which is a life insurance policy that was
8 obtained by presenting false information concerning any fact
9 material to the policy or by concealing that fact, for the purpose
10 of misleading another, or providing information concerning any fact
11 material to the policy, if the owner or the owner's agent intended
12 to defraud the policy's issuer;

13 (vii) attempt to commit, assist, aid or
14 abet in the commission of, or engage in conspiracy to commit the
15 acts or omissions specified in this paragraph; or

16 (viii) misrepresent the state of residence
17 of an owner to be a state or jurisdiction that does not have a law
18 substantially similar to this chapter for the purpose of evading or
19 avoiding the provisions of this chapter.

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

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

27 (10) "Life insurance agent" means a person licensed in
28 this state as a resident or nonresident insurance agent who has
29 received qualification or authority to write life insurance
30 coverage under this code.

31 (11) "Life settlement contract" means a written

1 agreement entered into between a provider and an owner establishing
2 the terms under which compensation or anything of value will be paid
3 and is less than the expected death benefit of the insurance policy
4 or certificate, in return for the owner's assignment, transfer,
5 sale, devise, or bequest of the death benefit or a portion of an
6 insurance policy or certificate of insurance for compensation;
7 provided, however, that the minimum value for a life settlement
8 contract must be greater than a cash surrender value or accelerated
9 death benefit available at the time of an application for a life
10 settlement contract. The term also includes the transfer for
11 compensation or value of ownership or beneficial interest in a
12 trust or other entity that owns the policy if the trust or other
13 entity was formed or used for the principal purpose of acquiring one
14 or more life insurance contracts that insure the life of an
15 individual residing in this state. The term also includes:

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

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

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

24 (ii) the owner receives on the date of the
25 premium finance loan a guarantee of the future life settlement
26 value of the policy; or

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

30 (11-A) "Life settlement contract" does not include:

31 (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
28 corporation or between a corporation and one or more of its
29 shareholders or one or more trusts established by its shareholders;

30 (ii) between one or more partners in a
31 partnership or between a partnership and one or more of its partners

1 or one or more trusts established by its partners; or

2 (iii) between one or more members in a
3 limited liability company or between a limited liability company
4 and one or more of its members or one or more trusts established by
5 its members;

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

11 (I) any other contract, transaction, or
12 arrangement from the definition of life settlement contract that
13 the commissioner determines is not of the type intended to be
14 regulated by this chapter.

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

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

26 (A) a provider or other license holder under this
27 chapter;

28 (B) a qualified institutional buyer as defined by
29 17 C.F.R. Section 230.144A, as amended;

30 (C) a financing entity;

31 (D) a special purpose entity; or

1 (E) a related provider trust.

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

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

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

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

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

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

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

27 (C) the insurer of a life insurance policy or
28 rider to the extent of providing accelerated death benefits or
29 riders under Subchapter B, Chapter 1111, or cash surrender value;

30 (D) an individual who enters into or effectuates
31 not more than one agreement in a calendar year for the transfer of a

1 life insurance policy or certificate issued pursuant to a group
2 life insurance policy, for compensation or anything of value less
3 than the expected death benefit payable under the policy;

4 (E) a purchaser;

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

8 (G) a financing entity;

9 (H) a special purpose entity;

10 (I) a related provider trust;

11 (J) a broker; or

12 (K) an accredited investor or qualified
13 institutional buyer as those terms are defined by 17 C.F.R. Section
14 230.144A, as amended, who purchases a life settlement policy from a
15 provider.

16 (19) "Purchased policy" means a policy or group
17 certificate that has been acquired by a provider pursuant to a life
18 settlement contract.

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

25 (21) "Related provider trust" means a titling trust or
26 other trust established by a licensed provider or a financing
27 entity for the sole purpose of holding the ownership or beneficial
28 interest in purchased policies in connection with a financing
29 transaction. In order to qualify as a related provider trust, the
30 trust must have a written agreement with the licensed provider
31 under which the licensed provider is responsible for ensuring

1 compliance with all statutory and regulatory requirements and under
2 which the trust agrees to make all records and files relating to
3 life settlement transactions available to the department as if
4 those records and files were maintained directly by the licensed
5 provider.

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

9 (23) "Special purpose entity" means a corporation,
10 partnership, trust, limited liability company, or other legal
11 entity formed solely to provide either directly or indirectly
12 access to institutional capital markets:

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

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

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

18 (ii) the securities pay a fixed rate of
19 return commensurate with established asset-backed institutional
20 capital markets.

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

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

28 (b) An application for a provider or broker license must be
29 made to the department by the applicant on a form prescribed by the
30 commissioner. The application must be accompanied by a fee in an
31 amount established by the commissioner by rule. The license and

1 renewal fees for a provider license must be reasonable and the
2 license and renewal fees for a broker license may not exceed those
3 established for an insurance agent, as otherwise provided by this
4 chapter.

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

9 (d) Not later than the 30th day after the first date of
10 operating as a broker, a life insurance agent shall notify the
11 commissioner on a form prescribed by the commissioner that the
12 agent is acting as a broker and shall pay any applicable fee to be
13 determined by the commissioner by rule. Notification must include
14 an acknowledgement by the life insurance agent that the agent will
15 operate as a broker in accordance with this chapter.

16 (e) An insurer that issued a policy that is the subject of a
17 life settlement contract is not responsible for any act or omission
18 of a broker or provider or purchaser arising out of or in connection
19 with the life settlement transaction, unless the insurer receives
20 compensation for the placement of a life settlement contract from
21 the provider, purchaser, or broker in connection with the life
22 settlement contract.

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

29 (g) A license expires on the second anniversary of the date
30 of issuance. A license holder may renew the license on payment of a
31 renewal fee. As specified by Subsection (b), the renewal fee for a

1 provider license may not exceed a reasonable fee.

2 (h) An applicant shall provide the information that the
3 commissioner requires on forms adopted by the commissioner. The
4 commissioner may, at any time, require an applicant to fully
5 disclose the identity of the applicant's stockholders that own at
6 least 10 percent of the shares of an applicant the shares of which
7 are publicly traded, partners, officers and employees, and the
8 commissioner may, in the exercise of the commissioner's sole
9 discretion, refuse to issue a license in the name of any person if
10 the commissioner is not satisfied that an officer, an employee, a
11 stockholder, or a partner of the applicant who may materially
12 influence the applicant's conduct meets the standards of Sections
13 1111A.001 to 1111A.018.

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

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

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

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

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

29 (4) if the applicant is a legal entity, is formed or
30 organized under the laws of this state or is a foreign legal entity
31 authorized to transact business in this state, or provides a

1 certificate of good standing from the state of its domicile; and

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

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

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

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

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

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

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

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

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

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

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

10 (q) The business of life settlements constitutes the
11 business of insurance.

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

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

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

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

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

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

1 moral turpitude is an element, regardless of whether a judgment of
2 conviction has been entered by the court;

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

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

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

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

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

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

27 (b) An insurer may not, as a condition of responding to a
28 request for verification of coverage or in connection with the
29 transfer of a policy pursuant to a life settlement contract,
30 require that the owner, insured, provider, or broker sign any form,
31 disclosure, consent, waiver, or acknowledgment that has not been

1 expressly approved by the commissioner for use in connection with
2 life settlement contracts.

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

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

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

15 (a) For a policy settled not later than the fifth anniversary of
16 the date of policy issuance, each provider shall file with the
17 commissioner not later than March 1 of each year an annual statement
18 containing the information that the commissioner prescribes by
19 rule. In addition to any other requirements, the annual statement
20 must specify the total number, aggregate face amount, and life
21 settlement proceeds of policies settled during the immediately
22 preceding calendar year, together with a breakdown of the
23 information by policy issue year. The annual statement must also
24 include the names of each insurance company whose policies have
25 been settled and the brokers that have settled the policies.

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

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

9 (d) Except as otherwise allowed or required by law, a
10 provider, broker, insurance company, insurance agent, information
11 bureau, rating agency or company, or any other person with actual
12 knowledge of an insured's identity, may not disclose the identity
13 of an insured or information that there is a reasonable basis to
14 believe could be used to identify the insured or the insured's
15 financial or medical information to any other person unless the
16 disclosure is:

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

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

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

29 (4) a term or condition of the transfer of a policy by
30 one provider to another licensed provider, in which case the
31 receiving provider shall comply with the confidentiality

1 requirements of this subsection;

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

11 (6) required to purchase stop loss coverage.

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

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

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

25 (b) No cause of action shall arise, nor shall any liability
26 be imposed against any person for the act of communicating or
27 delivering information to the commissioner or the commissioner's
28 authorized representative or examiner pursuant to an examination
29 made under this chapter, if the act of communication or delivery was
30 performed in good faith and without fraudulent intent or the intent
31 to deceive. This subsection does not abrogate or modify in any way

1 any common law or statutory privilege or immunity enjoyed by any
2 person identified in Subsection (a).

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

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

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

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

19 (c) A person may not:

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

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

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

30 (1) the fact that possible alternatives to life
31 settlement contracts exist, including accelerated benefits offered

1 by the issuer of the life insurance policy;

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

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

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

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

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

29 (7) the fact that entering into a life settlement
30 contract may cause the owner to forfeit other rights or benefits,
31 including conversion rights and waiver of premium benefits that may

1 exist under the policy or certificate of a group policy, and that
2 assistance should be sought from a professional financial advisor;

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

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

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

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

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

29 (13) the fact that the insured may be contacted by
30 either the provider or broker or an authorized representative of
31 the provider or broker for the purpose of determining the insured's

1 health status or to verify the insured's address and that this
2 contact is limited to once every three months if the insured has a
3 life expectancy of more than one year, and not more than once per
4 month if the insured has a life expectancy of one year or less;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

29 (b) If, as described in Sections 1111A.002(11) and (11-A),
30 the loan provides funds that can be used for a purpose other than
31 paying for the premiums, costs, and expenses associated with

1 obtaining and maintaining the life insurance policy and loan, and
2 notwithstanding any other law, the application must be rejected as
3 a violation of Section 1111A.017.

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

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

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

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

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

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

25 (D) you should consult a professional advisor,
26 since a change in ownership in satisfaction of the loan may result
27 in tax consequences to the owner, depending on the structure of the
28 loan.";

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

31 (A) "I have not entered into any agreement or

1 arrangement providing for the future sale of this life insurance
2 policy";

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

9 (C) "The borrower has an insurable interest in
10 the insured."

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

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

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

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

1 response, based on the medical evidence and documents provided, the
2 insurer intends to pursue an investigation about the validity of
3 the insurance contract.

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

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

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

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

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

30 (h) Medical information solicited or obtained by a license
31 holder is subject to the applicable provision of state law relating

1 to confidentiality of medical information, if not otherwise
2 provided in this chapter.

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

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

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

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

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

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

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

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

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

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

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

30 (C) the owner's spouse dies;

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

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

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

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

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

23 (q) If the provider submits to the insurer a copy of
24 independent evidence provided for Subsection (n)(2)(A) at the time
25 the provider submits a request to the insurer to effect the transfer
26 of the policy to the provider, the copy is deemed to establish that
27 the settlement contract satisfies the requirements of this section.

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

1 (b) The commissioner may not adopt a rule establishing a
2 price or fee for the sale or purchase of a life settlement contract.
3 This subsection does not prohibit the commissioner from adopting a
4 rule relating to an unjust price or fee for the sale or purchase of a
5 life settlement contract.

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

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

18 (b) A provider licensed in this state who enters into a life
19 settlement contract with an owner who is a resident of another state
20 that has enacted statutes or adopted rules governing life
21 settlement contracts is governed in the effectuation of that life
22 settlement contract by the statutes and rules of the owner's state
23 of residence. If the state in which the owner is a resident has not
24 enacted statutes or adopted rules governing life settlement
25 contracts, the provider shall give the owner notice that neither
26 state regulates the transaction on which the owner is entering. For
27 transactions in those states, however, the provider shall maintain
28 all records required by this chapter if the transactions were
29 executed in this state. The forms used in those states need not be
30 approved by the department.

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

1 and a purchaser in any individual transaction, the laws of the state
2 that apply to the owner shall take precedence and the provider shall
3 comply with those laws.

4 Sec. 1111A.017. PROHIBITED PRACTICES. (a) A person may
5 not:

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

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

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

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

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

29 (6) with respect to any settlement contract or
30 insurance policy and to a broker, knowingly solicit an offer from,
31 effectuate a life settlement contract with, or make a sale to any

1 provider, financing entity, or related provider trust that is
2 controlling, controlled by, or under common control with the broker
3 unless the relationship is fully disclosed to the owner;

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

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

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

24 (b) A violation of this section is a fraudulent life
25 settlement act.

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

28 (b) A person may not interfere with the enforcement of this
29 chapter or an investigation of a suspected or actual violation of
30 this chapter.

31 (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;

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

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

4 (c) Release of documents and evidence under Subsection (b)
5 does not abrogate or modify the privilege granted in Subsection
6 (a).

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

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

12 (2) preempt, supersede, or limit any provision of any
13 state securities law or any rule, order, or notice issued under the
14 law;

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

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

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

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

1 of this section. Antifraud initiatives must include:

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

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

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

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

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

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

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

24 Sec. 1111A.023. INJUNCTION; CIVIL REMEDIES; CEASE AND
25 DESIST ORDERS. (a) In addition to the penalties and other
26 enforcement provisions of this chapter, if any person violates this
27 chapter or any rule implementing this chapter, the commissioner may
28 seek an injunction in a court in the county where the person resides
29 or has a principal place of business and may apply for temporary and
30 permanent orders that the commissioner determines necessary to
31 restrain the person from further committing the violation.

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

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

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

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

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

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

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

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

25 (2) Sections 31.002, 32.021, 32.023, 32.041, 38.001,
26 81.004, 86.001, 86.051, 86.052, 201.004, 401.051, 401.054,
27 401.151(a), 521.003, 521.004, 543.001(c), 801.056, and 862.052;

28 (3) Subchapter A, Chapter 32;

29 (4) Subchapter C, Chapter 36;

30 (5) Subchapter B, Chapter 404; and

31 (6) Subchapter B, Chapter 491.

1 SECTION _____. (a) A provider lawfully transacting
2 business in this state before the effective date of this Act may
3 continue to do so pending approval or disapproval of the person's
4 application for a license as long as the application is filed with
5 the commissioner of insurance not later than 30 days after the date
6 of the publication by the commissioner of an application form and
7 instructions for licensure of providers. If the publication of the
8 application form and instructions is before the effective date of
9 this Act, then the filing of the application may not be later than
10 30 days after the effective date of this Act and the applicant may
11 use any form of life settlement contract that has been filed with
12 the commissioner pending approval, provided that the form is
13 otherwise in compliance with the provisions of this Act. A person
14 transacting business in this state under this provision shall
15 comply with all other requirements of this Act.

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

30 SECTION _____. The heading to Chapter 1111, Insurance Code,
31 is amended to read as follows:

1 CHAPTER 1111. [~~LIFE AND VIATICAL SETTLEMENTS AND~~] ACCELERATED
2 TERM LIFE INSURANCE BENEFITS

3 SECTION _____. Subsection (a), Section 1551.255, Insurance
4 Code, is amended to read as follows:

5 (a) In this section, "viatical settlement" has the meaning
6 assigned to "life settlement contract" by Section 1111A.002
7 [~~1111.001~~].

8 SECTION _____. Subchapter A, Chapter 1111, Insurance Code,
9 is repealed.

ADOPTED

MAY 16 2011

FLOOR AMENDMENT NO. 2

BY: Carona

Atty. Gen.
Secretary of the Senate

1 Amend Amendment No. 1 by Carona to H.B. 2277 as follows:

2 (1) In added Section 1111A.003(h), Insurance Code (page 13,
3 lines 5 - 6), strike "disclose the identity of the applicant's
4 stockholders that own at least 10 percent of the shares of an
5 applicant the shares of which" and substitute "disclose the
6 identity of its stockholders, except stockholders owning fewer
7 than ten percent of the shares of an applicant whose shares".

8 (2) In added Section 1111A.012(a), Insurance Code (page 20,
9 lines 26 - 29), strike "Not later than the fifth day after the
10 date a provider receives the application for a life settlement
11 contract, the provider shall provide, in a separate written
12 document, the following information to the owner:" and
13 substitute "The broker, or the provider if no broker is involved
14 in the application, shall provide in writing, in a separate
15 document that is signed by the owner, the following information
16 to the owner not later than the date of application for a life
17 settlement contract:".

18 (3) In added Chapter 1111A, Insurance Code, immediately
19 following added Section 1111A.025 (between page 37 and 38), add
20 the following:

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

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

25 (2) Section 1111A.012; and

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

27 (b) The commissioner may exempt a broker who acts only as a
28 life expectancy estimator from other provisions of this chapter
29 if the commissioner finds that the application of those

1 provisions to the broker are not necessary for the public
2 welfare.

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION
Revision 1

May 25, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2277 by Eiland (Relating to the sale, exchange, or replacement of life insurance and annuity contracts.), As Passed 2nd House

Estimated Two-year Net Impact to General Revenue Related Funds for HB2277, As Passed 2nd House: a positive impact of \$52,500 through the biennium ending August 31, 2013.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$52,500
2013	\$0
2014	\$0
2015	\$0
2016	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>Dept Ins Operating</i> <i>Acct</i> 36	Probable Savings/ (Cost) from <i>Dept Ins Operating</i> <i>Acct</i> 36	Probable Revenue Gain/(Loss) from <i>Insurance Maint Tax</i> <i>Fees</i> 8042
2012	\$52,500	\$53,600	(\$53,600)	\$196,537
2013	\$0	\$0	\$0	\$232,486
2014	\$0	\$0	\$0	\$232,486
2015	\$0	\$0	\$0	\$232,486
2016	\$0	\$0	\$0	\$232,486

Fiscal Year	Probable Savings/ (Cost) from <i>Insurance Maint Tax</i> <i>Fees</i> 8042	Change in Number of State Employees from FY 2011
2012	(\$196,537)	3.0
2013	(\$232,486)	3.0
2014	(\$232,486)	3.0
2015	(\$232,486)	3.0
2016	(\$232,486)	3.0

Fiscal Analysis

The bill would amend the Insurance Code relating to consumer protections in the purchase of life settlement contracts and imposing penalties. The bill would require the Texas Department of Insurance (TDI) to review antifraud plans that will be filed with the Commissioner and make recommendations on those plans. The bill would authorize TDI to investigate a suspected fraudulent life settlement act, investigate a person engaged in the business of life settlements, and imposes criminal and administrative sanctions for violations. The bill would require persons and entities to file suspected fraud reports to TDI to process and investigate any crimes or violations. The bill would require TDI to investigate the potential criminal violation and prepare the case for criminal prosecution if needed. The bill would authorize TDI to conduct examinations of entities involved in the viatical settlement business.

This bill would take effect on September 1, 2011.

Methodology

Based on the analysis provided by TDI, implementation of the bill would expand the duties and increase the workload of TDI's fraud unit and financial examination division. The agency indicates that implementation of this bill would require 2.0 additional full-time-equivalent positions (FTEs) in the fraud unit and 1.0 additional FTEs in the financial division. Each year the 3.0 FTEs would cost \$166,206 in salaries and wages, \$46,305 in benefit costs, \$13,300 in travel, \$5,850 for telephones and consumables, and \$825 in other operating expenses. One-time equipment and other operating expenses expenditures are anticipated to be \$17,651 in fiscal year 2012.

Based on the information provided by TDI, this analysis assumes that implementation of the bill would result in a one-time revenue gain (\$53,600 in fiscal year 2012) in General Revenue-Dedicated Texas Department of Insurance Fund 36 (GR-D Fund 36) from filing fees and a one-time revenue gain (\$52,500 in fiscal year 2012) in General Revenue from assessed penalties. It is assumed that the gain to GR-D Fund 36 would partially fund the cost of the FTEs in fiscal year 2012. It is assumed that the remaining cost of the FTEs would be funded from General Revenue – Insurance Maintenance Tax and Insurance Department Fees. Since insurance maintenance tax is self-leveling, this analysis assumes that the costs to implement this bill would come from fund balances or the maintenance tax would be set to recover a higher level of revenue.

Technology

The bill is anticipated to have a technology impact of \$2,825 in fiscal year 2012.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance

LBB Staff: JOB, SD, MW, CH, KJG

LEGISLATIVE BUDGET BOARD

Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 18, 2011

TO: Honorable Joe Straus, Speaker of the House, House of Representatives

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2277 by Eiland (Relating to the sale, exchange, or replacement of life insurance and annuity contracts.), **As Passed 2nd House**

Estimated Two-year Net Impact to General Revenue Related Funds for HB2277, As Passed 2nd House: a positive impact of \$52,500 through the biennium ending August 31, 2013.

The bill would make no appropriation but could provide the legal basis for an appropriation of funds to implement the provisions of the bill.

General Revenue-Related Funds, Five-Year Impact:

Fiscal Year	Probable Net Positive/(Negative) Impact to General Revenue Related Funds
2012	\$52,500
2013	\$0
2014	\$0
2015	\$0
2016	\$0

All Funds, Five-Year Impact:

Fiscal Year	Probable Revenue Gain/(Loss) from <i>General Revenue Fund</i> 1	Probable Revenue Gain/(Loss) from <i>Dept Ins Operating</i> <i>Acct</i> 36	Probable Savings/ (Cost) from <i>Dept Ins Operating</i> <i>Acct</i> 36	Probable Revenue Gain/(Loss) from <i>Insurance Maint Tax</i> <i>Fees</i> 8042
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The bill would amend the Insurance Code relating to consumer protections in the purchase of life settlement contracts and imposing penalties. The bill would require the Texas Department of Insurance (TDI) to review antifraud plans that will be filed with the Commissioner and make recommendations on those plans. The bill would authorize TDI to investigate a suspected fraudulent life settlement act, investigate a person engaged in the business of life settlements, and imposes criminal and administrative sanctions for violations. The bill would require persons and entities to file suspected fraud reports to TDI to process and investigate any crimes or violations. The bill would require TDI to investigate the potential criminal violation and prepare the case for criminal prosecution if needed. The bill would authorize TDI to conduct examinations of entities involved in the viatical settlement business.

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Based on the information provided by TDI, this analysis assumes that implementation of the bill would result in a one-time revenue gain (\$53,600 in fiscal year 2012) in General Revenue-Dedicated Texas Department of Insurance Fund 36 (GR-D Fund 36) from filing fees and a one-time revenue gain (\$52,500 in fiscal year 2012) in General Revenue from assessed penalties. It is assumed that the gain to GR-D Fund 36 would partially fund the cost of the FTEs in fiscal year 2012. It is assumed that the remaining cost of the FTEs would be funded from General Revenue – Insurance Maintenance Tax and Insurance Department Fees. Since insurance maintenance tax is self-leveling, this analysis assumes that the costs to implement this bill would come from fund balances or the maintenance tax would be set to recover a higher level of revenue.

Technology

The bill is anticipated to have a technology impact of \$2,825 in fiscal year 2012.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance

LBB Staff: JOB, KJG, MW, CH

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

May 5, 2011

TO: Honorable Robert Duncan, Chair, Senate Committee on State Affairs

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: **HB2277** by Eiland (Relating to the sale, exchange, or replacement of life insurance and annuity contracts.), **As Engrossed**

No significant fiscal implication to the State is anticipated.

The bill would amend the Insurance Code relating to the sale, exchange, or replacement of life insurance and annuity contracts. Based on the analysis provided by the Texas Department of Insurance (TDI), it is assumed that any costs associated with the implementation of this bill would be absorbed within existing agency resources. Also based on information provided by TDI, this analysis assumes that implementation of the bill would result in a one-time revenue gain (\$30,600 in fiscal year 2012) in General Revenue-Dedicated Texas Department of Insurance Fund 36 from filing fees. Since General Revenue-Dedicated Texas Department of Insurance Fund 36 is a self-leveling account, this analysis also assumes that any additional revenue resulting from the implementation of the bill would accumulate in the account fund balances and that the department would adjust the assessment of the maintenance tax or other fees accordingly in the following year.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance

LBB Staff: JOB, KJG, CH

LEGISLATIVE BUDGET BOARD
Austin, Texas

FISCAL NOTE, 82ND LEGISLATIVE REGULAR SESSION

April 4, 2011

TO: Honorable John T. Smithee, Chair, House Committee on Insurance

FROM: John S O'Brien, Director, Legislative Budget Board

IN RE: HB2277 by Eiland (Relating to the sale, exchange, or replacement of life insurance and annuity contracts.), **As Introduced**

No significant fiscal implication to the State is anticipated.

The bill would amend the Insurance Code relating to the sale, exchange, or replacement of life insurance and annuity contracts. Based on the analysis provided by the Texas Department of Insurance (TDI), it is assumed that any costs associated with the implementation of this bill would be absorbed within existing agency resources. Also based on information provided by TDI, this analysis assumes that implementation of the bill would result in a one-time revenue gain (\$30,600 in fiscal year 2012) in General Revenue-Dedicated Texas Department of Insurance Fund 36 from filing fees. Since General Revenue-Dedicated Texas Department of Insurance Fund 36 is a self-leveling account, this analysis also assumes that any additional revenue resulting from the implementation of the bill would accumulate in the account fund balances and that the department would adjust the assessment of the maintenance tax or other fees accordingly in the following year.

Local Government Impact

No fiscal implication to units of local government is anticipated.

Source Agencies: 454 Department of Insurance

LBB Staff: JOB, KJG, CH