

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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;

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

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

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

(5) in connection with an accident and health insurance policy, to provide to policy or certificate holders, in addition to benefits under the terms of the insurance contract, health-

SENATE VERSION (IE)

SECTION 1. Same as House version.

CONFERENCE

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

related services or health-related information, or to disclose the availability of those additional services and information to prospective policy or certificate holders; or

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

No equivalent provision.

No equivalent provision.

SENATE VERSION (IE)

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

CHAPTER 1111. ~~LIFE AND VIATICAL SETTLEMENTS AND~~ ACCELERATED TERM LIFE INSURANCE BENEFITS [FA1]

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

CHAPTER 1111A. LIFE SETTLEMENT CONTRACTS

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

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

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

CONFERENCE

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

insurance policy under a life settlement contract.

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

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

(4) "Chronically ill" means:

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

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

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

(5) "Financing entity" means an underwriter, placement

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

agent, lender, purchaser of securities, purchaser of a policy or certificate from a provider, credit enhancer, or any entity that has a direct ownership in a policy or certificate that is the subject of a life settlement contract whose principal activity related to the transaction is providing funds to effect the life settlement contract or purchase of a policy, and who has an agreement in writing with a provider to finance the acquisition of a life settlement contract. The term does not include a non-accredited investor or purchaser.

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

(7) "Fraudulent life settlement act" includes:

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

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

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

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

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

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

- (d) premium paid on an insurance policy;
- (e) payment for and changes in ownership or beneficiary made in accordance with the terms of a life settlement contract or an insurance policy;
- (f) the reinstatement or conversion of an insurance policy;
- (g) in the solicitation, offer to enter into, or effectuation of a life settlement contract, or an insurance policy;
- (h) the issuance of written evidence of life settlement contracts or insurance; or
- (i) an application for or the existence of or any payment related to a loan secured directly or indirectly by an interest in a life insurance policy;
- (ii) failing to disclose to the insurer, if the insurer has requested the disclosure, that the prospective insured has undergone a life expectancy evaluation by any person or entity other than the insurer or its authorized representatives in connection with the issuance of the policy; or
- (iii) employing a device, scheme, or artifice to defraud in the business of life settlements; and
- (B) acts or omissions in the furtherance of a fraud or to prevent the detection of a fraud, or acts or omissions that permit an employee or an agent to:
 - (i) remove, conceal, alter, destroy, or sequester from the commissioner the assets or records of a license holder or another person engaged in the business of life settlements;
 - (ii) misrepresent or conceal the financial condition of a license holder, financing entity, insurer, or other person;
 - (iii) transact the business of life settlements in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of life settlements;
 - (iv) file with the commissioner or the chief insurance regulatory official of another jurisdiction a document containing false information or concealing information about

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

a material fact;

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

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

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

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

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

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

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

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

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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

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

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

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

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

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

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

(A) a policy loan by a life insurance company under the terms of a life insurance policy or accelerated death provision

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

contained in the life insurance policy, whether issued with the original policy or as a rider;

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

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

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

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

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

(G) a bona fide business succession planning arrangement:

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

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

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

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

members;

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

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

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

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

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

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

(C) a financing entity;

(D) a special purpose entity; or

(E) a related provider trust.

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

(15) "Policy" means an individual or group policy, group

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

certificate, contract, or arrangement of life insurance owned by a resident of this state, regardless of whether delivered or issued for delivery in this state.

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

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

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

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

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

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

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

(E) a purchaser;

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

(G) a financing entity;

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

(H) a special purpose entity;

(I) a related provider trust;

(J) a broker; or

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

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

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

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

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

(23) "Special purpose entity" means a corporation, partnership, trust, limited liability company, or other legal

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

entity formed solely to provide either directly or indirectly access to institutional capital markets:

(A) for a financing entity or provider; or

(B) in connection with a transaction in which:

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

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

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

Sec. 1111A.003. LICENSING REQUIREMENTS:

EXEMPTION. (a) A person, wherever located, may not act as a provider or broker with an owner who is a resident of this state, unless the person holds a license from the department.

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

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

(d) Not later than the 30th day after the first date of operating as a broker, a life insurance agent shall notify the commissioner on a form prescribed by the commissioner that the agent is acting as a broker and shall pay any applicable fee

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

to be determined by the commissioner by rule. Notification must include an acknowledgement by the life insurance agent that the agent will operate as a broker in accordance with this chapter.

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

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

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

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

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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

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

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

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

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

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

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

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

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

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

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

(D) a written description or chart outlining the arrangement of the antifraud personnel who are responsible for the investigation and reporting of possible fraudulent insurance

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

acts and the investigation of unresolved material inconsistencies between medical records and insurance applications.

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

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

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

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

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

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

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

Sec. 1111A.004. LICENSE SUSPENSION, REVOCATION, OR REFUSAL TO RENEW. (a) The commissioner may

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

suspend, revoke, or refuse to renew the license of a license holder if the commissioner finds that:

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

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

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

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

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

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

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

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

(9) the license holder or any officer, partner, member, or key

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

management personnel of the license holder has violated this chapter.

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

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

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

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

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

Sec. 1111A.006. REPORTING REQUIREMENTS AND

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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

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

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

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

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

any other person unless the disclosure is:

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

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

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

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

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

(6) required to purchase stop loss coverage.

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

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

confidentiality of nonpublic personal information.

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

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

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

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

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

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

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

to life insurers or to license holders under this chapter.

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

(c) A person may not:

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

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

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

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

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

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

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

(5) the fact that the owner has a right to terminate a life settlement contract within 15 days of the date the contract is executed by all parties and the owner has received the disclosures described in this section, that rescission, if

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

exercised by the owner, is effective only if both notice of the rescission is given and the owner repays all proceeds and any premiums, loans, and loan interest paid on account of the provider during the rescission period, and that if the insured dies during the rescission period, the contract is considered rescinded subject to repayment by the owner or the owner's estate of all proceeds and any premiums, loans, and loan interest to the provider;

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

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

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

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

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

(11) the following language: "All medical, financial, or personal information solicited or obtained by a provider or broker about an insured, including the insured's identity or the

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

identity of family members or a spouse or a significant other, may be disclosed as necessary to effect the life settlement contract between the owner and provider. If you are asked to provide this information, you will be asked to consent to the disclosure. The information may be provided to someone who buys the policy or provides funds for the purchase. You may be asked to renew your permission to share information every two years.";

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

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

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

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

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

(17) the name, business address, and telephone number of the

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

independent third party escrow agent, and the fact that the owner may inspect or receive copies of the relevant escrow or trust agreements or documents; and

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

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

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

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

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

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

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

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

(d) For the purpose of this section, "gross offer or bid" means

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

the total amount or value offered by the provider for the purchase of one or more life insurance policies, inclusive of commissions and fees.

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

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

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

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

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

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

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

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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

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

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

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

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

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

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

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

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

(2) a document in which the insured consents to the release of

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

medical records to a provider, settlement broker, or insurance agent and, if the policy was issued less than two years after the date of application for a settlement contract, to the insurance company that issued the policy.

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

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

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

(e) If a settlement broker or life insurance agent performs any of these activities required of the provider, the provider is

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

deemed to have fulfilled the requirements of this section.

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

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

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

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

(j) Not later than the third business day after the date the provider receives from the owner the documents to effect the transfer of the insurance policy, the provider shall pay the proceeds of the settlement into an escrow or trust account managed by a trustee or escrow agent in a state or federally chartered financial institution pending acknowledgement of the transfer by the issuer of the policy. The trustee or escrow agent shall transfer to the owner the proceeds due to the owner

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

not later than the third business day after the date the trustee or escrow officer receives from the insurer acknowledgment of the transfer of the insurance policy.

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

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

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

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

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

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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

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

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

(C) the owner's spouse dies;

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

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

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

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

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

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

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

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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

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

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

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

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

(b) A provider licensed in this state who enters into a life settlement contract with an owner who is a resident of another state that has enacted statutes or adopted rules governing life settlement contracts is governed in the effectuation of that life settlement contract by the statutes and rules of the owner's state of residence. If the state in which the owner is a resident

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

has not enacted statutes or adopted rules governing life settlement contracts, the provider shall give the owner notice that neither state regulates the transaction on which the owner is entering. For transactions in those states, however, the provider shall maintain all records required by this chapter if the transactions were executed in this state. The forms used in those states need not be approved by the department.

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

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

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

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

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

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

(5) if providing premium financing, receive any proceeds, fee, or other consideration from the policy or owner in addition to the amounts required to pay principal, interest, and any reasonable costs or expenses incurred by the lender or borrower in connection with the premium finance agreement, except in event of a default, unless either the default on the

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

loan or transfer of the policy occurs pursuant to an agreement or understanding with any other person for the purpose of evading regulation under this chapter;

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

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

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

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

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

Sec. 1111A.018. FRAUD PREVENTION AND CONTROL.

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

- (a) A person may not commit a fraudulent life settlement act.
- (b) A person may not interfere with the enforcement of this chapter or an investigation of a suspected or actual violation of this chapter.
- (c) A person in the business of life settlements may not knowingly or intentionally permit a person convicted of a felony involving dishonesty or breach of trust to participate in the business of life settlements.
- (d) A life settlement contract and an application for a life settlement contract, regardless of the form of transmission, must contain the following, or a substantially similar, statement: "Any person who knowingly presents false information in an application for insurance or a life settlement contract is guilty of a crime and may be subject to fines and confinement in prison."
- (e) The failure to include a statement as required in Subsection (d) is not a defense in any prosecution for a fraudulent life settlement act.
- Sec. 1111A.019. MANDATORY REPORTING OF FRAUDULENT LIFE SETTLEMENT ACTS. A person engaged in the business of life settlements has a duty under Section 701.051 to report a fraudulent life settlement act.
- Sec. 1111A.020. CONFIDENTIALITY. (a) The documents and evidence obtained by the commissioner in an investigation of a suspected or an actual fraudulent life settlement act are privileged and confidential, are not a public record, and are not subject to discovery or subpoena in a civil or criminal action.
- (b) Subsection (a) does not prohibit release by the commissioner of documents and evidence obtained in an investigation of a suspected or an actual fraudulent life settlement act:
- (1) in an administrative or judicial proceeding to enforce a

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

provision of this code or another insurance law of this state;
(2) to a federal, state, or local law enforcement or regulatory agency, to an organization established for the purpose of detecting and preventing a fraudulent life settlement act, or to the National Association of Insurance Commissioners; or
(3) at the discretion of the commissioner, to a person in the business of life settlements that is aggrieved by a fraudulent life settlement act.
(c) Release of documents and evidence under Subsection (b) does not abrogate or modify the privilege granted in Subsection (a).
Sec. 1111A.021. OTHER LAW ENFORCEMENT OR REGULATORY AUTHORITY. This chapter does not:
(1) preempt the authority or relieve the duty of another law enforcement or regulatory agency to investigate, examine, and prosecute a suspected violation of law;
(2) preempt, supersede, or limit any provision of any state securities law or any rule, order, or notice issued under the law;
(3) prevent or prohibit a person from disclosing voluntarily information concerning life settlement fraud to a law enforcement or regulatory agency other than the department;
or
(4) limit the powers granted by the laws of this state to the commissioner or an insurance fraud unit to investigate and examine a possible violation of law and to take appropriate action against wrongdoers.
Sec. 1111A.022. LIFE SETTLEMENT ANTIFRAUD INITIATIVES. (a) A provider or broker shall implement antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent life settlement acts. At the discretion of the commissioner, the commissioner may order, or a license holder may request and the commissioner may grant, a

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

modification of the following required initiatives as necessary to ensure an effective antifraud program. A modification granted under this section may be more or less restrictive than the required initiatives so long as the modification may reasonably be expected to accomplish the purpose of this section. Antifraud initiatives must include:

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

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

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

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

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

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

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

Sec. 1111A.023. INJUNCTION; CIVIL REMEDIES; CEASE AND DESIST ORDERS. (a) In addition to the penalties and other enforcement provisions of this chapter, if any person violates this chapter or any rule implementing this chapter, the commissioner may seek an injunction in a court in

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

the county where the person resides or has a principal place of business and may apply for temporary and permanent orders that the commissioner determines necessary to restrain the person from further committing the violation.

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

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

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

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

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

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

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

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

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

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

(3) Subchapter A, Chapter 32;
(4) Subchapter C, Chapter 36;
(5) Subchapter B, Chapter 404; and
(6) Subchapter B, Chapter 491.
Sec. 1111A.026. APPLICABILITY OF CERTAIN
PROVISIONS TO LIFE EXPECTANCY ESTIMATORS. (a)
The following provisions do not apply to a broker who acts
solely as a life expectancy estimator:
(1) Section 1111A.003(p);
(2) Section 1111A.012; and
(3) Sections 1111A.014(l) and (m).
(b) The commissioner may exempt a broker who acts only as
a life expectancy estimator from other provisions of this
chapter if the commissioner finds that the application of those
provisions to the broker are not necessary for the public
welfare. [FA1,FA2,FA1,3rd]

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

- (a) Except as otherwise specifically provided by this chapter, this chapter does not apply to transactions involving:
- (1) credit life insurance;
 - (2) group life insurance or group annuities for which there is no direct solicitation of individuals by an agent;
 - (3) [~~group~~] life insurance and annuities used to fund prepaid funeral benefits contracts, as defined by Chapter 154, Finance Code;
 - (4) an application to:
 - (A) exercise a contractual change or a conversion privilege made to the insurer that issued the existing policy or contract;
 - (B) replace an existing policy or contract by the insurer that issued the existing policy or contract under a program filed

SECTION 2. Same as House version.

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

with and approved by the commissioner; or
(C) exercise a term conversion privilege among corporate affiliates;
(5) life insurance proposed to replace life insurance under a binding or conditional receipt issued by the same insurer;
(6) a policy or contract used to fund:
(A) an employee pension benefit plan or employee welfare benefit plan that is covered by the Employee Retirement Income Security Act of 1974 (29 U.S.C. Section 1001 et seq.);
(B) a plan described by Section 401(a), 401(k), or 403(b), Internal Revenue Code of 1986, if established or maintained by an employer;
(C) a government or church plan, as defined by Section 414, Internal Revenue Code of 1986, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization described under Section 457, Internal Revenue Code of 1986;
or
(D) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
(7) new coverage provided under a life insurance policy or contract if the cost is borne wholly by the insured's employer or by an association of which the insured is a member;
(8) an existing life insurance policy that is a nonconvertible term life insurance policy scheduled to expire in five years or less and that cannot be renewed;
(9) immediate annuities purchased with proceeds from an existing contract; or
(10) structured settlements.

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

SENATE VERSION (IE)

SECTION 3. Same as House version.

CONFERENCE

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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

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

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

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

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

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

(3) "Insurer" means a [an insurance] company authorized to

SECTION 4. Same as House version.

SECTION 5. Same as House version.

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

engage in the business of life insurance and annuities in this state.

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

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

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

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

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

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

(E) used in a financed purchase.

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

(A) age;

(B) annual income;

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

(D) financial experience;

(E) financial objectives;

(F) intended use of the annuity;

(G) financial time horizon;

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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

(I) liquidity needs;

(J) liquid net worth;

(K) risk tolerance; and

(L) tax status.

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

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

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

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

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

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

(2) contracts used to fund:

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

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

(C) a government or church plan, as defined by Section 414, Internal Revenue Code of 1986, a government or church welfare benefit plan, or a deferred compensation plan of a state or local government or tax exempt organization

SECTION 6. Same as House version.

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

described under Section 457, Internal Revenue Code of 1986;
(D) a nonqualified deferred compensation arrangement established or maintained by an employer or plan sponsor;
(E) settlements of or assumptions of liabilities associated with personal injury litigation or any dispute or claim resolution process; or
(F) prepaid funeral benefits contracts, as defined by Chapter 154, Finance Code.

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

Sec. 1115.051. SUITABILITY OF ANNUITY PRODUCT REQUIRED. (a) In recommending to a consumer the purchase of an annuity or the exchange of an annuity that results in another insurance transaction or series of insurance transactions, the agent, or the insurer if an agent is not involved, must have a reasonable basis to believe that:

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

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

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

SENATE VERSION (IE)

SECTION 7. Same as House version.

CONFERENCE

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

or living benefit:

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

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

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

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

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

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

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

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

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

- (1) the consumer refuses to provide suitability information requested by the agent or insurer;
- (2) the agent or insurer does not make a recommendation;
- (3) the agent or insurer makes a recommendation later found to have been prepared based on inaccurate material information provided by the consumer; or
- (4) the consumer decides to enter into a transaction that is not based on a recommendation of the agent or insurer.
- (e) An insurer's issuance of an annuity under circumstances described by Subsection (d) must be reasonable under all circumstances actually known to the insurer at the time the annuity is issued.
- (f) An agent, or an insurer if an agent is not involved, shall at the time of sale of an annuity:
 - (1) make a record of any recommendation made by the agent or insurer that is subject to Subsection (a);
 - (2) obtain a customer-signed statement documenting the customer's refusal, if any, to provide suitability information; and
 - (3) obtain a customer-signed statement acknowledging that an annuity transaction is not recommended if the customer decides to enter into an annuity transaction that is not based on the agent's or insurer's recommendation. ~~[Before the execution of a purchase or exchange of an annuity resulting from a recommendation, an agent, or the insurer if an agent is not involved, must make reasonable efforts to obtain:~~
 - ~~[(1) information from the consumer concerning:~~
 - ~~[(A) the consumer's financial status;~~
 - ~~[(B) the consumer's tax status; and~~
 - ~~[(C) the consumer's investment objectives; and~~
 - ~~[(2) other relevant information used or considered to be reasonable by the agent or that insurer in making recommendations to consumers.~~

SENATE VERSION (IE)

CONFERENCE

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

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

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

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

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

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

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

Sec. 1115.052. SUPERVISION ~~[COMPLIANCE]~~ SYSTEM.

(a) Each insurer shall establish supervision ~~[operate a system,~~] that is reasonably designed to achieve the insurer's and the insurer's agents' compliance with this chapter~~[, to supervise recommendations]~~.

(b) An insurer may comply with Subsection (a) ~~[by complying with Subsections (c)-(e) or]~~ by establishing and

SENATE VERSION (IE)

CONFERENCE

SECTION 8. Same as House version.

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

maintaining the insurer's own supervision [~~compliance~~] system under which, at a minimum, the insurer [~~that complies with Subsection (c). Each agent and independent agency shall adopt an insurer's compliance system or shall establish and maintain such a system.~~]

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

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

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

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

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

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

(B) may:

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

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

(5) maintains reasonable procedures, such as confirmation of consumer suitability information, systematic customer surveys, interviews, confirmation letters, and programs of internal monitoring, to detect recommendations that are not suitable, which may involve applying sampling procedures or

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

confirming suitability information after the issuance or delivery of the annuity; and

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

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

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

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

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

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

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

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

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

~~(2) filing a complaint; or~~

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

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

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

SENATE VERSION (IE)

CONFERENCE

SECTION 9. Same as House version.

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

- (1) is a senior manager with responsibility for the delegated functions; and
- (2) has a reasonable basis for making the certification.

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

Sec. 1115.054. COMPLIANCE WITH CERTAIN NATIONAL STANDARDS. (a) ~~Subject to Subsection (c), sales made in compliance~~ ~~[Compliance]~~ with the conduct rules of the Financial Industry Regulatory Authority (FINRA) relating to suitability and supervision of annuity transactions, or the rules of another national organization recognized by the commissioner, satisfy ~~[satisfies]~~ the requirements of ~~[under]~~ this chapter. ~~This section applies to FINRA member broker-dealer sales of variable annuities and fixed annuities if the suitability and supervision conduct rules are similar to those applied to variable annuity sales [for the recommendation of annuities registered under the Securities Act of 1933 (15 U.S.C. Section 77a et seq.) or rules or regulations adopted under that Act].~~

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

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

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

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

SENATE VERSION (IE)

SECTION 10. Same as House version.

CONFERENCE

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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

Sec. 1115.056. AGENT TRAINING [~~EDUCATION~~] REQUIREMENTS. (a) An agent may not solicit the sale of an annuity product unless the agent has adequate knowledge of the product to recommend the annuity and is in compliance with the insurer's standards for product training. An agent may rely on insurer-provided, product-specific training standards and materials to comply with this subsection.

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

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

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

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

(2) identification of the parties to an annuity;

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

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

(5) the primary uses of annuities; and

SECTION 11. Same as House version.

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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

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

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

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

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

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

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

- (1) obtaining a certificate of completion of the training course or obtaining an appropriate report provided by the department;
- (2) using a department-sponsored database or vendor; or
- (3) using a reasonably reliable commercial database vendor

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

~~that has a reporting arrangement with approved insurance education providers. [A resident agent that intends to sell, solicit, or negotiate a contract for an annuity in this state or to represent an insurer in relation to such an annuity must submit evidence satisfactory to the department of completion of at least four hours of training relating to annuities before soliciting individual consumers for the purpose of selling annuities.~~

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

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

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

(1) order:

(A) the ~~[(1) an]~~ insurer to take reasonable appropriate corrective action for any consumer harmed by the insurer or by the insurer's agent because of a violation of this chapter; or
(B) a general agency, independent agency, or the ~~[(2) an]~~ agent to take reasonably appropriate corrective action for any consumer harmed by the agent's violation of this chapter; and

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

SENATE VERSION (IE)

CONFERENCE

SECTION 12. Same as House version.

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

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

(b) The commissioner shall ~~[may]~~ reduce or eliminate a sanction for a violation of this chapter otherwise applicable if:
(1) corrective action for the consumer was taken promptly by the agent or insurer after a violation was discovered; or
(2) the violation was not part of a pattern or practice.

No equivalent provision.

No equivalent provision.

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

(b) Section 1114.004(a), Insurance Code, as amended by this Act, applies only to a transaction involving a life insurance or annuity policy or contract occurring on or after the effective date of this Act. A transaction involving a policy or contract

SECTION 13. Same as House version.

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

(a) In this section, "viatical settlement" has the meaning assigned to "life settlement contract" by Section 1111A.002 [~~1111.001~~]. [FA1]

SECTION __. Subchapter A, Chapter 1111, Insurance Code, is repealed. [FA1]

SECTION 14. Same as House version.

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

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

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

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

No equivalent provision.

SENATE VERSION (IE)

CONFERENCE

SECTION __. (a) A provider lawfully transacting business in this state before the effective date of this Act may continue to do so pending approval or disapproval of the person's application for a license as long as the application is filed with the commissioner of insurance not later than 30 days after the date of the publication by the commissioner of an application form and instructions for licensure of providers. If the

House Bill 2277
Senate Amendments
Section-by-Section Analysis

HOUSE VERSION

SENATE VERSION (IE)

CONFERENCE

publication of the application form and instructions is before the effective date of this Act, then the filing of the application may not be later than 30 days after the effective date of this Act and the applicant may use any form of life settlement contract that has been filed with the commissioner pending approval, provided that the form is otherwise in compliance with the provisions of this Act. A person transacting business in this state under this provision shall comply with all other requirements of this Act.

(b) A person who has lawfully negotiated a life settlement contract between an owner residing in this state and one or more providers for at least one year immediately before the effective date of this Act may continue to do so pending approval or disapproval of the person's application for a license provided that the application is filed with the commissioner of insurance not later than the 30th day after the date of publication by the commissioner of an application form and instructions for licensure of brokers. If the publication of the application form and instructions is before the effective date of this Act, then the filing of the application may not be later than the 30th day after the effective date of this Act. Any person transacting business in this state under this provision shall comply with all other requirements of this Act. [FA1]

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

SECTION 15. Same as House version.