

By: Hinojosa

S.B. No. 1581

A BILL TO BE ENTITLED

1 AN ACT
2 relating to the regulation of secondary market transactions related
3 to the business of life settlements; providing penalties;
4 authorizing fees.

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

6 SECTION 1. Section 1111A.002, Insurance Code, is amended by
7 amending Subdivisions (1), (2), (3), (7), (8), (9), (13), (18), and
8 (20) and adding Subdivisions (1-A), (8-A), (25), (26), and (27) to
9 read as follows:

10 (1) "Accredited investor" has the meaning assigned by
11 17 C.F.R. Section 230.501.

12 (1-A) "Advertisement" means a written, electronic, or
13 printed communication or a communication by means of a recorded
14 telephone message or transmitted on radio, television, the
15 Internet, or similar communications media, including film strips,
16 motion pictures, and videos, published, disseminated, circulated,
17 or placed directly before the public for the purpose of creating an
18 interest in or inducing a person to:

19 (A) purchase or sell, assign, devise, bequest, or
20 transfer the death benefit or ownership of a life insurance policy
21 or an interest in a life insurance policy under a life settlement
22 contract; or

23 (B) enter into a secondary market transaction.

24 (2) "Broker" means a person who, on behalf of an owner

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

14 (3) "Business of life settlements" means an activity
15 involved in, but not limited to, offering to enter into,
16 soliciting, negotiating, procuring, effectuating, monitoring, or
17 tracking, of:

- 18 (A) life settlement contracts; or
- 19 (B) secondary market transactions.

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

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

- 25 (i) presenting, causing to be presented, or
- 26 preparing with knowledge and belief that it will be presented to or
- 27 by a provider, premium finance lender, broker, insurer, insurance

1 agent, secondary provider, investor, or any other person, false
2 material information, or concealing material information, as part
3 of, in support of, or concerning a fact material to one or more of
4 the following:

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

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

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

11 (d) premium paid on an insurance
12 policy;

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

16 (f) the reinstatement or conversion
17 of an insurance policy;

18 (g) in the solicitation, offer to
19 enter into, or effectuation of a life settlement contract, ~~[or]~~ an
20 insurance policy, or a secondary market transaction;

21 (h) the issuance of written evidence
22 of an insurance policy, a life settlement contract, ~~[contracts]~~ or
23 a secondary market transaction ~~[insurance]~~; or

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

27 (ii) failing to disclose to the insurer, if

1 the insurer has requested the disclosure, that the prospective
2 insured has undergone a life expectancy evaluation by any person or
3 entity other than the insurer or its authorized representatives in
4 connection with the issuance of the policy; or

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

7 (B) acts or omissions in the furtherance of a
8 fraud or to prevent the detection of a fraud, or acts or omissions
9 that permit an employee or an agent to:

10 (i) remove, conceal, alter, destroy, or
11 sequester from the commissioner the assets or records of a license
12 holder or another person engaged in the business of life
13 settlements;

14 (ii) misrepresent or conceal the financial
15 condition of a license holder, financing entity, insurer, investor,
16 or other person;

17 (iii) transact the business of life
18 settlements in violation of laws requiring a license, certificate
19 of authority, or other legal authority for the transaction of the
20 business of life settlements;

21 (iv) file with the commissioner or the
22 chief insurance regulatory official of another jurisdiction a
23 document containing false information or concealing information
24 about a material fact;

25 (v) engage in embezzlement, theft,
26 misappropriation, or conversion of monies, funds, premiums,
27 credits, or other property of a provider, insurer, insured, owner,

1 insurance policy owner, secondary provider, investor, or any other
2 person engaged in the business of life settlements or insurance;

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

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

15 (viii) misrepresent the state of residence
16 of an owner, secondary provider, or investor to be a state or
17 jurisdiction that does not have a law substantially similar to this
18 chapter with respect to the interest of the owner, secondary
19 provider, or investor, as applicable, for the purpose of evading or
20 avoiding the provisions of this chapter.

21 (8) "Insured" means a person covered under the policy
22 being considered for sale in a life settlement contract or related
23 to a secondary market transaction.

24 (8-A) "Investor" means, except to the extent otherwise
25 clear from context, a person who is offered or obtains an interest
26 in a life settlement contract from a secondary provider in a
27 secondary market transaction.

1 (9) "Life expectancy" means the arithmetic mean of the
2 number of months the insured under the life insurance policy to be
3 settled or related to a secondary market transaction can be
4 expected to live [~~as determined by a life expectancy company or~~
5 ~~provider~~] considering medical records and appropriate experiential
6 data.

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

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

17 (B) a qualified institutional buyer as defined by
18 17 C.F.R. Section 230.144A, as amended;

19 (C) a financing entity;

20 (D) a special purpose entity; [~~or~~]

21 (E) a related provider trust; or

22 (F) any person who holds an interest in a life
23 settlement contract as a result of a secondary market transaction.

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

27 (A) a bank, savings bank, savings and loan

1 association, or credit union;

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

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

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

15 (E) a purchaser;

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

19 (G) a financing entity;

20 (H) a special purpose entity;

21 (I) a related provider trust;

22 (J) a broker; [~~or~~]

23 (K) an accredited investor or qualified
24 institutional buyer as those terms are defined by 17 C.F.R.
25 Sections 230.501 and 230.144A, respectively, as amended, who
26 purchases a life insurance [~~settlement~~] policy or a certificate
27 issued pursuant to a life insurance policy from a provider or a

1 secondary provider; or

2 (L) a secondary provider.

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

10 (25) "Prospectus" means a written, electronic, or
11 printed communication or a communication by other means published,
12 disseminated, circulated, or placed before an investor for the
13 purpose of creating an interest in or inducing an investor to
14 purchase, sell, or assign an ownership interest in a life
15 settlement contract.

16 (26) "Secondary market transaction" means to offer to
17 sell an interest in a life settlement contract or to solicit,
18 negotiate, procure, effectuate, monitor, track the sale of, or sell
19 an interest in a life settlement contract.

20 (27) "Secondary provider" means a person, other than
21 an investor, offering to enter into a secondary market transaction
22 whether for a fee, commission, or other valuable consideration or
23 otherwise.

24 SECTION 2. Section 1111A.003, Insurance Code, is amended by
25 adding Subsections (a-1), (a-2), (a-3), (a-4), and (e-1) and
26 amending Subsections (b), (c), (g), (j), (m), (n), and (o) to read
27 as follows:

1 (a-1) A person, wherever located, may not act as a secondary
2 provider in a transaction involving an investor who is a resident of
3 this state unless the person holds a license from the department
4 under this chapter.

5 (a-2) A person may not act as a secondary provider in this
6 state unless the person holds a license from the department under
7 this chapter.

8 (a-3) Except as provided by Subsection (a-4), a person may
9 not provide a life expectancy estimate in connection with a life
10 settlement or secondary market transaction in which a party is a
11 resident of this state unless the person holds a license as a life
12 expectancy estimator from the department under this chapter.

13 (a-4) Subsection (a-3) does not require additional
14 licensing of a licensed broker acting as a life expectancy
15 estimator only on behalf of an owner.

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

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

1 requirements of this section and may operate as a broker, but may
2 not act as a provider or secondary provider without holding a
3 license under this chapter.

4 (e-1) An insurer that issued a policy related to a secondary
5 market transaction is not responsible for any act or omission of a
6 secondary provider arising out of or in connection with the
7 transaction, unless the insurer receives compensation from the
8 secondary provider in connection with the transaction.

9 (g) A license expires on the second anniversary of the date
10 of issuance. A license holder may renew the license on payment of a
11 renewal fee. As specified by Subsection (b), the renewal fee for a
12 provider, secondary provider, or life expectancy estimator license
13 may not exceed a reasonable fee.

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

18 (1) if a provider or secondary provider, has provided
19 a detailed plan of operation;

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

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

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

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

2 (5) if a broker, provider, or secondary provider, has
3 provided to the commissioner an antifraud plan that meets the
4 requirements of Section 1111A.022 and includes:

5 (A) a description of the procedures for detecting
6 and investigating possible fraudulent acts and procedures for
7 resolving material inconsistencies between medical records and
8 insurance applications or information provided by a provider,
9 secondary provider, life expectancy estimator, or other person in
10 connection with a secondary market transaction;

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

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

15 (D) a written description or chart outlining the
16 arrangement of the antifraud personnel who are responsible for the
17 investigation and reporting of possible fraudulent insurance or
18 life settlement acts and the investigation of unresolved material
19 inconsistencies between medical records and insurance applications
20 or information provided by a provider, secondary provider, life
21 expectancy estimator, or other person in connection with a
22 secondary market transaction.

23 (m) A provider or secondary provider may not allow any other
24 person to perform the functions of a broker, secondary provider, or
25 life expectancy estimator unless the person holds a current, valid
26 license as a broker, secondary provider, or life expectancy
27 estimator, as applicable, and as provided in this section.

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

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

11 SECTION 3. Section 1111A.004(a), Insurance Code, is amended
12 to read as follows:

13 (a) The commissioner may suspend, revoke, or refuse to renew
14 the license of a license holder if the commissioner finds that:

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

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

22 (3) the license holder is a provider or secondary
23 provider and demonstrates a pattern of unreasonably withholding
24 payments to policy owners or investors, as applicable;

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

27 (5) the license holder or any officer, partner,

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

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

10 (7) the license holder is a secondary provider and has
11 entered into a secondary market transaction using a form or
12 prospectus that has not been approved under this chapter;

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

15 (9) ~~(8)~~ the license holder is a provider and has
16 assigned, transferred, or pledged a settled policy to a person
17 other than a provider or secondary provider licensed in this state,
18 a purchaser, an accredited investor or qualified institutional
19 buyer as defined respectively in 17 C.F.R. Sections 230.501 and
20 ~~[Section]~~ 230.144A, as amended, a financing entity, a special
21 purpose entity, or a related provider trust; ~~or~~

22 (10) ~~(9)~~ the license holder or any officer, partner,
23 member, or key management personnel of the license holder has
24 violated this chapter; or

25 (11) the license holder is a secondary provider and
26 has entered into a secondary market transaction with a person who is
27 not an accredited investor.

1 SECTION 4. The heading to Section 1111A.005, Insurance
2 Code, is amended to read as follows:

3 Sec. 1111A.005. REQUIREMENTS FOR CONTRACT FORMS,
4 DISCLOSURE AND PROSPECTUS FORMS, AND ADVERTISEMENTS.

5 SECTION 5. Section 1111A.005, Insurance Code, is amended by
6 amending Subsection (b) and adding Subsection (e) to read as
7 follows:

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

17 (e) A person may not use a prospectus or any other form in
18 connection with a secondary market transaction before the 31st day
19 after the date the form is filed with the commissioner. The
20 commissioner shall disapprove a form filed under this subsection
21 if, in the commissioner's opinion, the form fails to meet the
22 applicable requirements of Sections 1111A.011, 1111A.012,
23 1111A.014, and 1111A.023(b) or is unreasonable, contrary to the
24 interests of the public, or otherwise misleading or unfair. A form
25 filed under this subsection that is not affirmatively approved or
26 disapproved in a written order of the commissioner on or before the
27 30th day the form is filed is considered approved.

1 SECTION 6. Section 1111A.006, Insurance Code, is amended by
2 adding Subsections (a-1), (a-2), and (b-1) and amending Subsections
3 (c), (d), and (e) to read as follows:

4 (a-1) Each secondary provider shall file with the
5 commissioner not later than March 1 of each year an annual statement
6 containing the information that the commissioner prescribes by
7 rule. In addition to any other requirements, the annual statement
8 must specify for life settlement contracts involved in secondary
9 market transactions occurring during the preceding calendar year:

10 (1) the total number of related purchased policies;

11 (2) the aggregate face amount of the policies;

12 (3) the aggregate premium amount of the policies;

13 (4) the premium payment periods for the policies; and

14 (5) the aggregate life proceeds paid to the secondary
15 provider.

16 (a-2) An annual statement under Subsection (a-1) must also
17 include the names of each life expectancy estimator and escrow
18 agent, if any, employed by the secondary provider with respect to a
19 secondary market transaction.

20 (b-1) The information required under Subsections (a-1) and
21 (a-2) is limited to only those secondary transactions in which the
22 secondary provider or the investor is a resident of this state and
23 may not include individual transaction data regarding the business
24 of life settlements or information if there is a reasonable basis to
25 find that the information could be used to identify the owner or the
26 insured.

27 (c) A provider or secondary provider that wilfully fails to

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

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

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

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

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

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

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

20 (6) required to purchase stop loss coverage.

21 (e) Nonpublic personal information solicited or obtained in
22 connection with a proposed or actual life settlement contract or
23 secondary market transaction is subject to the provisions
24 applicable to financial institutions under the federal
25 Gramm-Leach-Bliley Act (Pub. L. No. 106-102), and any other state
26 and federal laws relating to confidentiality of nonpublic personal
27 information.

1 SECTION 7. The heading to Section 1111A.011, Insurance
2 Code, is amended to read as follows:

3 Sec. 1111A.011. ADVERTISING AND PROSPECTUSES.

4 SECTION 8. Section 1111A.011, Insurance Code, is amended by
5 adding Subsection (a-1) and amending Subsection (b) to read as
6 follows:

7 (a-1) A secondary provider licensed under this chapter may
8 conduct or participate in an advertisement or deliver a prospectus
9 in this state. The advertisement or prospectus must comply with
10 all advertising and marketing laws under Chapter 541 and rules
11 adopted by the commissioner that are applicable to life insurers or
12 to license holders under this chapter.

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

15 SECTION 9. Section 1111A.012(a), Insurance Code, is amended
16 to read as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

24 (12) the fact that the commissioner requires providers
25 and brokers to print separate signed fraud warnings on the
26 applications and on the life settlement contracts as follows: "Any
27 person who knowingly presents false information in an application

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

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

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

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

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

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

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

26 (19) the fact that the purchased policy or life
27 settlement contract may be the subject of a secondary market

1 transaction.

2 SECTION 10. Chapter 1111A, Insurance Code, is amended by
3 adding Sections 1111A.0135 and 1111A.0136 to read as follows:

4 Sec. 1111A.0135. DISCLOSURES TO INVESTORS. (a) A
5 secondary provider shall provide to investors, in a separate
6 document that is signed by the investors, written disclosures as
7 required by rule adopted by the commissioner.

8 (b) The disclosures described by Subsection (a) must be
9 provided to the investor not less than seven days before the date
10 the secondary market transaction closes.

11 (c) The failure to provide the written disclosures
12 described by Subsection (a) is an unfair method of competition or an
13 unfair or deceptive act or practice.

14 Sec. 1111A.0136. LIMITATION ON SECONDARY MARKET
15 TRANSACTIONS. A secondary provider may enter into a secondary
16 market transaction only with an accredited investor.

17 SECTION 11. Section 1111A.014, Insurance Code, is amended
18 by amending Subsections (a), (b), (c), and (d) and adding
19 Subsection (g-1) to read as follows:

20 (a) Before entering into a life settlement contract with an
21 owner of a policy with respect to which the insured is terminally or
22 chronically ill, the provider must obtain:

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

27 (2) a document in which the insured consents to the

1 release of medical records to a provider, settlement broker, [~~or~~]
2 insurance agent, secondary provider, or investor and, if the policy
3 was issued less than two years after the date of application for a
4 settlement contract, to the insurance company that issued the
5 policy.

6 (b) An insurer shall respond to a request for verification
7 of coverage submitted by a provider, settlement broker, [~~or~~] life
8 insurance agent, secondary provider, or investor not later than the
9 30th calendar day after the date the request is received. The
10 request for verification of coverage must be made on a form approved
11 by the commissioner. The insurer shall complete and issue the
12 verification of coverage or indicate in which respects the insurer
13 is unable to respond. In the response, the insurer shall indicate
14 whether at the time of the response, based on the medical evidence
15 and documents provided, the insurer intends to pursue an
16 investigation about the validity of the insurance contract.

17 (c) On or before the date of execution of the life
18 settlement contract, the provider shall obtain a witnessed document
19 in which the owner consents to the settlement contract, represents
20 that the owner has a full and complete understanding of the
21 settlement contract and of the benefits of the policy, acknowledges
22 that the owner is entering into the settlement contract freely and
23 voluntarily, acknowledges that the purchased policy or contract may
24 be the subject of a secondary market transaction, and, for persons
25 with a terminal or chronic illness or condition, acknowledges that
26 the insured has a terminal or chronic illness and that the terminal
27 or chronic illness or condition was diagnosed after the policy was

1 issued.

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

6 (g-1) Not later than the 20th day after the date that a
7 secondary market transaction closes, the secondary provider shall
8 give written notice to the insurer that issued the purchased policy
9 that is subject to a life settlement contract that the contract has
10 become subject to a secondary market transaction. The notice shall
11 be accompanied by the documents required by Section 1111A.0135.

12 SECTION 12. Sections 1111A.015(a) and (b), Insurance Code,
13 are amended to read as follows:

14 (a) The commissioner may adopt rules implementing this
15 chapter and regulating the activities and relationships of
16 providers, brokers, insurers, secondary providers, investors, and
17 their authorized representatives.

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

24 SECTION 13. Section 1111A.016, Insurance Code, is amended
25 by adding Subsection (d) to read as follows:

26 (d) A secondary provider licensed in this state who enters
27 into a secondary market transaction with an investor who is a

1 resident of another state that has enacted statutes or adopted
2 rules governing secondary market transactions is governed with
3 respect to that secondary market transaction by the statutes and
4 rules of the investor's state of residence. If the state in which
5 the investor is a resident has not enacted statutes or adopted rules
6 governing secondary market transactions, the secondary provider
7 shall give the investor notice that the secondary provider:

8 (1) is governed by the statutes and rules of this
9 state; and

10 (2) must maintain all records required by this
11 chapter.

12 SECTION 14. Section 1111A.017(a), Insurance Code, is
13 amended to read as follows:

14 (a) A person may not:

15 (1) enter into a life settlement contract or a
16 secondary market transaction if the person knows or reasonably
17 should have known that:

18 (A) the life insurance policy was obtained by
19 means of a false, deceptive, or misleading application for the life
20 insurance policy; or

21 (B) the purchased policy or life settlement
22 contract was obtained by means of a false, deceptive, or misleading
23 act or practice;

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

1 (3) engage in a fraudulent act or practice in
2 connection with:

3 (A) a transaction relating to any settlement
4 involving an owner who is a resident of this state; or

5 (B) a secondary market transaction involving a
6 secondary provider or investor who is a resident of this state;

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

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

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

25 (7) with respect to any life settlement contract or
26 insurance policy and a provider, knowingly enter into a life
27 settlement contract with an owner if, in connection with the life

1 settlement contract, anything of value will be paid to a broker that
2 is controlling, controlled by, or under common control with the
3 provider or the financing entity or related provider trust that is
4 involved in such settlement contract, unless the relationship is
5 fully disclosed to the owner;

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

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

18 (10) with respect to a secondary provider:

19 (A) enter into a secondary market transaction
20 unless the prospectus and forms, as required by statute or may be
21 prescribed by rule, have been filed with or approved by the
22 commissioner, as applicable; or

23 (B) make any statement or representation to an
24 investor in connection with a secondary market transaction that is
25 false, misleading, or deceptive.

26 SECTION 15. Section 1111A.018(d), Insurance Code, is
27 amended to read as follows:

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

10 SECTION 16. Section 1111A.021, Insurance Code, is amended
11 to read as follows:

12 Sec. 1111A.021. OTHER LAW ENFORCEMENT OR REGULATORY
13 AUTHORITY. (a) This chapter does not:

14 (1) except as provided by Subsection (b) preempt the
15 authority or relieve the duty of another law enforcement or
16 regulatory agency to investigate, examine, and prosecute a
17 suspected violation of law;

18 (2) except as provided by Subsection (b) preempt,
19 supersede, or limit any provision of any state securities law or any
20 rule, order, or notice issued under the law;

21 (3) prevent or prohibit a person from disclosing
22 voluntarily information concerning life settlement fraud or fraud
23 in a secondary market transaction to a law enforcement or
24 regulatory agency other than the department; or

25 (4) limit the powers granted by the laws of this state
26 to the commissioner or an insurance fraud unit to investigate and
27 examine a possible violation of law and to take appropriate action

1 against wrongdoers.

2 (b) A secondary market transaction deemed not to involve a
3 public offering under 17 C.F.R. Section 230.506 under the
4 Securities Act of 1933 (15 U.S.C. Section 77a et seq.) may not be
5 considered a security under The Securities Act (Article 581-1 et
6 seq., Vernon's Texas Civil Statutes). A secondary provider is not
7 subject to investigation, examination, or prosecution by the State
8 Securities Board with respect to such a transaction.

9 SECTION 17. Section 1111A.022(a), Insurance Code, is
10 amended to read as follows:

11 (a) A provider, ~~or~~ broker, or secondary provider shall
12 implement antifraud initiatives reasonably calculated to detect,
13 prosecute, and prevent fraudulent life settlement acts. At the
14 discretion of the commissioner, the commissioner may order, or a
15 license holder may request and the commissioner may grant, a
16 modification of the following required initiatives as necessary to
17 ensure an effective antifraud program. A modification granted
18 under this section may be more or less restrictive than the required
19 initiatives so long as the modification may reasonably be expected
20 to accomplish the purpose of this section. Antifraud initiatives
21 must include:

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

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

27 (A) a description of the procedures for detecting

1 and investigating possible fraudulent life settlement acts and
2 procedures for resolving material inconsistencies between medical
3 records and insurance applications or information provided by a
4 provider, secondary provider, life expectancy estimator, or other
5 person in connection with a secondary market transaction;

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

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

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

16 SECTION 18. Section 1111A.023(d), Insurance Code, is
17 amended to read as follows:

18 (d) The provisions of this chapter may not be waived by
19 agreement. No choice of law provision may prevent the application
20 of this chapter to any life settlement or secondary market
21 transaction.

22 SECTION 19. Section 1111A.024(a), Insurance Code, is
23 amended to read as follows:

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

1 SECTION 20. Section 1111A.026, Insurance Code, is amended
2 to read as follows:

3 Sec. 1111A.026. APPLICABILITY OF CERTAIN PROVISIONS TO
4 CERTAIN LIFE EXPECTANCY ESTIMATORS. (a) The following provisions
5 do not apply to a broker who acts solely as a life expectancy
6 estimator on behalf of an owner:

- 7 (1) Section 1111A.003(p);
- 8 (2) Section 1111A.012; and
- 9 (3) Sections 1111A.014(1) and (m).

10 (b) The commissioner may exempt a broker who acts only as a
11 life expectancy estimator on behalf of an owner from other
12 provisions of this chapter if the commissioner finds that the
13 application of those provisions to the broker is not necessary for
14 the public welfare.

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

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

5 SECTION 22. This Act takes effect September 1, 2013.