

By: Eiland

H.B. No. 2739

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of certain life settlement contracts;
providing penalties.

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

SECTION 1. The heading to Chapter 1111, Insurance Code, is amended to read as follows:

CHAPTER 1111. LIFE SETTLEMENT CONTRACTS, [~~AND~~] VIATICAL
SETTLEMENTS, AND CERTAIN RELATED PRACTICES; ACCELERATED TERM LIFE
INSURANCE BENEFITS

SECTION 2. The heading to Subchapter A, Chapter 1111, Insurance Code, is amended to read as follows:

SUBCHAPTER A. LIFE SETTLEMENT CONTRACTS AND VIATICAL SETTLEMENTS

SECTION 3. Section 1111.001, Insurance Code, is amended by adding Subsections (2-a), (2-b), (2-c), (2-d), and (2-e) to read as follows:

(2-a) "Premium finance loan" means a loan, made primarily for the purpose of making premium payments on a life insurance policy, that is secured by an interest in the life insurance policy.

(2-b) "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;

1 (B) a licensed lending institution, creditor, or
2 secured party under a premium finance loan agreement that takes an
3 assignment of a policy or certificate as collateral for a loan;

4 (C) the insurer of a policy or rider to the extent
5 of providing accelerated death benefits, riders, or cash surrender
6 value;

7 (D) any individual who enters into or effectuates
8 not more than one agreement in a calendar year for the transfer of
9 an insurance policy or certificate for compensation or anything of
10 value less than the expected death benefit payable under the
11 policy;

12 (E) a purchaser;

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

16 (G) a financing entity;

17 (H) a special purpose entity;

18 (I) a related provider trust;

19 (J) a broker; or

20 (K) an accredited investor or qualified
21 institutional buyer, as defined respectively by Securities and
22 Exchange Commission Regulation D (17 C.F.R. Section 230.501 et
23 seq.) and Securities and Exchange Commission Rule 144A (17 C.F.R.
24 Section 230.144A), who purchases a life settlement contract from a
25 provider.

26 (2-c) "Purchaser" means a person who pays compensation
27 or anything of value as consideration for a beneficial interest in a

1 trust that is vested with, or for the assignment, transfer, or sale
2 of, an ownership or other interest in an insurance policy or a
3 certificate that has been the subject of a life settlement
4 contract.

5 (2-d) "Related provider trust" means a titling trust
6 or other trust established by a registered provider or a financing
7 entity for the sole purpose of holding the ownership or beneficial
8 interest in purchased policies in connection with a financing
9 transaction, that includes a written agreement with the registered
10 provider under which:

11 (A) the registered provider is responsible for
12 ensuring compliance with all statutory and regulatory
13 requirements; and

14 (B) the trust agrees to make all records and
15 files relating to life settlement transactions available to the
16 department as if those records and files were maintained directly
17 by the provider.

18 (2-e) "Special purpose entity" means a corporation,
19 partnership, trust, limited liability company, or other legal
20 entity formed solely to provide, either directly or indirectly,
21 access to institutional capital markets for a financing entity or
22 provider in connection with a transaction in which the securities
23 in the special purpose entity:

24 (A) are acquired by the owner or by a "qualified
25 institutional buyer," as defined by Securities and Exchange
26 Commission Rule 144A (17 C.F.R. Section 230.144A); or

27 (B) pay a fixed rate of return commensurate with

1 established asset-backed institutional capital markets.

2 SECTION 4. Subchapter A, Chapter 1111, Insurance Code, is
3 amended by adding Sections 1111.0011, 1111.0012, and 1111.0013 to
4 read as follows:

5 Sec. 1111.0011. LIFE SETTLEMENT CONTRACT. (a) For
6 purposes of this subchapter, a "life settlement contract" means a
7 written agreement, entered into between a provider and an owner,
8 that establishes the terms under which:

9 (1) compensation or any thing of value that is less
10 than the expected death benefit of an insurance policy or
11 certificate of insurance will be paid in return for the owner's
12 assignment, transfer, sale, devise, or bequest, for compensation,
13 of the death benefit or any portion of the insurance policy or
14 certificate of insurance for compensation; and

15 (2) the minimum contract value is greater than any
16 cash surrender value or accelerated death benefit available on the
17 date of the application for the contract.

18 (b) The term includes:

19 (1) the transfer for compensation or value of
20 ownership or a beneficial interest in a trust or other entity that
21 owns the policy if the trust or other entity was formed or availed
22 of for the principal purpose of acquiring one or more life insurance
23 contracts owned by a person residing in this state; and

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

26 (A) the loan proceeds are not used solely to pay:

27 (i) policy premiums; and

1 (ii) any costs or expenses incurred by the
2 lender or the borrower in connection with the financing;

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

6 (C) the owner agrees on the date of the premium
7 finance loan to sell the policy or any portion of the death benefit
8 of the policy on any date following the issuance of the policy.

9 (c) The term does not include:

10 (1) a policy loan made by a life insurer under the
11 terms of a life insurance policy or accelerated death provisions
12 contained in the life insurance policy, whether issued with the
13 original policy or as a rider;

14 (2) a premium finance loan, or any loan made by a bank
15 or other licensed financial institution, if default on the loan or
16 the transfer of the policy in connection with such a default is not
17 in accordance with an agreement or understanding with any other
18 person entered into for the purpose of evading regulation under
19 this subchapter;

20 (3) a collateral assignment of a life insurance policy
21 made by an owner;

22 (4) a loan made by a lender that does not violate
23 Chapter 651, if the loan does not qualify as a life settlement
24 contract under Subsection (a) or (b);

25 (5) an agreement:

26 (A) in which each of the parties:

27 (i) is closely related to the insured by

1 consanguinity or affinity; or

2 (ii) otherwise has a lawful substantial
3 economic interest in the continued life, health, and bodily safety
4 of the insured; or

5 (B) that is a trust established primarily for the
6 benefit of a party described by Paragraph (A);

7 (6) any designation, consent, or agreement by an
8 insured who is an employee of an employer in connection with the
9 purchase by the employer, or a trust established by the employer, of
10 life insurance on the life of the employee;

11 (7) a bona fide business succession planning
12 arrangement:

13 (A) between one or more shareholders in a
14 corporation or between a corporation and one or more of its
15 shareholders or one or more trusts established by its shareholders;

16 (B) between one or more partners in a partnership
17 or between a partnership and one or more of its partners or one or
18 more trusts established by its partners; or

19 (C) between one or more members in a limited
20 liability company or between a limited liability company and one or
21 more of its members or one or more trusts established by its
22 members;

23 (8) an agreement entered into by a service recipient,
24 or a trust established by the service recipient, and a service
25 provider, or a trust established by the service provider, who
26 performs significant services for the service recipient's trade or
27 business; or

1 (9) any other contract, transaction, or arrangement
2 that the commissioner determines is not of the type intended to be
3 regulated by this subchapter.

4 Sec. 1111.0012. OWNER. (a) In this subchapter, "owner"
5 means the owner of a life insurance policy or a certificate holder
6 under a group policy who is a resident of this state who enters or
7 seeks to enter into a life settlement contract. The term includes a
8 viator. Except as otherwise provided by this subchapter, the term
9 is not limited to an owner of a life insurance policy or a
10 certificate holder under a group policy that insures the life of an
11 individual with a terminal or chronic illness or condition.

12 (b) The term does not include:

13 (1) a registered provider or any other person licensed
14 under this code while operating under this subchapter;

15 (2) a qualified institutional buyer, as defined by
16 Securities and Exchange Commission Rule 144A (17 C.F.R. Section
17 230.144A) under the Securities Act of 1933 (15 U.S.C. Section 77a et
18 seq.);

19 (3) a financing entity;

20 (4) a special purpose entity; or

21 (5) a related provider trust.

22 Sec. 1111.0013. STRANGER-ORIGINATED LIFE INSURANCE. (a) A
23 person may not procure a new insurance policy covering the life of
24 an insured if the person:

25 (1) lacks an insurable interest in the insured; and

26 (2) at the inception of the policy, owns or controls
27 the policy or the majority of the policy's death benefits.

1 (b) This section does not apply to the lawful assignment of
2 a life insurance policy, including a life settlement contract or a
3 viatical settlement, or a practice described by Section
4 1111.0011(c).

5 (c) For purposes of Chapter 701, an act that violates this
6 section constitutes a fraudulent insurance act.

7 SECTION 5. Section 1111.002, Insurance Code, is amended to
8 read as follows:

9 Sec. 1111.002. PURPOSE. The purpose of this subchapter is
10 to:

11 (1) provide for registration of persons engaged in the
12 business of life settlement contracts or viatical settlements; and

13 (2) provide consumer protection for a person who may
14 sell or otherwise transfer the person's life insurance policy.

15 SECTION 6. Section 1111.003, Insurance Code, is amended to
16 read as follows:

17 Sec. 1111.003. RULES; REGISTRATION AND REGULATION. (a) To
18 implement this subchapter, the commissioner shall adopt reasonable
19 rules relating to life settlement contracts [~~settlements~~] and
20 relating to viatical settlements.

21 (b) The rules adopted by the commissioner under this section
22 must include rules governing:

23 (1) registration of providers [~~a person engaged in the~~
24 ~~business of life settlements~~];

25 (2) registration of persons [~~a person~~] engaged in the
26 business of viatical settlements;

27 (3) approval of contract forms;

1 (4) disclosure requirements;

2 (5) prohibited practices relating to:

3 (A) unfair discrimination regarding [~~in the~~
4 ~~provision of~~] life settlement contracts or in the provision of
5 viatical settlements; and

6 (B) referral fees paid by providers and persons
7 engaged in the business of [~~life or~~] viatical settlements;

8 (6) assignment or resale of life insurance policies;

9 (7) maintenance of appropriate confidentiality of
10 personal and medical information; and

11 (8) the responsibility of a registrant to ensure
12 compliance with this subchapter and rules relating to life
13 settlement contracts or viatical settlements after the
14 registration is revoked, suspended, or otherwise lapses.

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

20 (d) The commissioner may not adopt a rule that regulates the
21 actions of an investor providing money to a provider [~~life~~] or a
22 viatical settlement company.

23 SECTION 7. Section 1111.005(a), Insurance Code, is amended
24 to read as follows:

25 (a) The commissioner may suspend or revoke a registration or
26 deny an application for registration if the commissioner determines
27 that the registrant or applicant, individually or through any

1 officer, director, or shareholder of the registrant or applicant:

2 (1) wilfully violated:

3 (A) this subchapter;

4 (B) an applicable provision of this code or
5 another insurance law of this state; or

6 (C) a rule adopted under a law described by
7 Paragraph (A) or (B);

8 (2) intentionally made a material misstatement in the
9 application for registration;

10 (3) obtained or attempted to obtain registration by
11 fraud or misrepresentation;

12 (4) misappropriated, converted to the registrant's or
13 applicant's own use, or illegally withheld money belonging to a
14 party to a life settlement contract or viatical settlement;

15 (5) was guilty of fraudulent or dishonest practices;

16 (6) materially misrepresented the terms of business
17 conducted under this subchapter or any other provision of this code
18 or another insurance law of this state;

19 (7) made or issued, or caused to be made or issued, a
20 statement materially misrepresenting or making incomplete
21 comparisons regarding the material terms of any business conducted
22 under this subchapter; or

23 (8) was convicted of a felony or was convicted of a
24 misdemeanor involving moral turpitude or fraud.

25 SECTION 8. Section 1111.006, Insurance Code, as effective
26 April 1, 2009, is amended to read as follows:

27 Sec. 1111.006. APPLICABILITY OF OTHER INSURANCE LAWS. The

1 following laws apply to a provider or a person engaged in the
2 business of [~~life or~~] viatical settlements:

- 3 (1) Chapters 82, 83, 84, 481, 541, and 701;
- 4 (2) Sections 31.002, 32.021, 32.023, 32.041, 38.001,
5 81.004, 86.001, 86.051, 86.052, 201.004, 401.051, 401.054,
6 401.151(a), 521.003, 521.004, 543.001(c), 801.056, and 862.052;
- 7 (3) Subchapter A, Chapter 32;
- 8 (4) Subchapter C, Chapter 36;
- 9 (5) Subchapter B, Chapter 404; and
- 10 (6) Subchapter B, Chapter 491.

11 SECTION 9. Subchapter A, Chapter 1111, Insurance Code, is
12 amended by adding Sections 1111.007, 1111.008, and 1111.009 to read
13 as follows:

14 Sec. 1111.007. DISCLOSURE TO INSURER. (a) In addition to
15 other questions an insurer may lawfully pose to an applicant for
16 life insurance, an insurer may inquire in the application for
17 insurance whether the proposed owner intends to pay premiums with
18 the assistance of financing from a lender who will use the policy as
19 collateral for a premium finance loan used to support the
20 financing.

21 (b) If the premium finance loan provides funds that can be
22 used for a purpose other than paying for the premiums, costs, and
23 expenses associated with obtaining and maintaining the life
24 insurance policy and loan, the application may be rejected as a
25 prohibited practice.

26 (c) If the financing does not violate Subsection (b) or the
27 insurer's lawful underwriting guidelines, the insurer may not

1 reject the application solely because the premiums will be
2 financed. The insurer may make disclosures to the applicant, on
3 either the application or an amendment to the application, to be
4 completed not later than the date the policy is delivered, that
5 include the following:

6 "If you have entered into a loan arrangement under which the
7 policy is used as collateral, and the policy changes ownership at
8 some point in the future in satisfaction of the loan, the following
9 may be true:

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

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

16 You should consult a professional adviser, since a change in
17 ownership in satisfaction of the loan may result in tax
18 consequences to the owner, depending on the structure of the loan."

19 (d) The insurer may also require certifications from the
20 applicant for insurance coverage or the insured, such as the
21 following:

22 "(A) I have not entered into any agreement or
23 arrangement under which I have agreed to make a future sale of this
24 life insurance policy.";

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

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

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

6 Sec. 1111.008. GENERAL REQUIREMENTS REGARDING LIFE
7 SETTLEMENT CONTRACTS. (a) Effective September 1, 2009, a person
8 may not enter into a life settlement contract during any period
9 before or on the date of the application for or the issuance of an
10 insurance policy, or during a period before the second anniversary
11 of issuance of the policy, regardless of the date:

12 (1) the compensation is to be provided; or

13 (2) the assignment, transfer, sale, devise, bequest,
14 or surrender of the policy is to occur.

15 (b) The prohibition under Subsection (a) does not apply if
16 the owner certifies to the provider that:

17 (1) the policy was issued on the owner's exercise of
18 conversion rights arising out of a group or individual policy, if
19 the total time covered under the conversion policy plus the time
20 covered under the prior policy is at least 24 months, and the time
21 covered under a group policy is computed without regard to a change
22 in insurers if the coverage has been continuous and under the same
23 group sponsorship; or

24 (2) the owner submits independent evidence to the
25 provider that one or more of the following conditions have been met
26 within the 24-month period:

27 (A) the owner or insured is terminally or

1 chronically ill;

2 (B) the owner or insured disposes of the
3 ownership interests in a closely held corporation under the terms
4 of a buyout or other similar agreement in effect at the time the
5 insurance policy was initially issued;

6 (C) the owner's spouse dies;

7 (D) the owner divorces his or her spouse;

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

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

12 (G) on the application of a creditor of the
13 owner, a final order, judgment, or decree is entered by a court of
14 competent jurisdiction:

15 (i) adjudicating the owner bankrupt or
16 insolvent;

17 (ii) approving a petition seeking
18 reorganization of the owner; or

19 (iii) appointing a receiver, trustee, or
20 liquidator to all or a substantial part of the owner's assets.

21 (c) Copies of the independent evidence required by
22 Subsection (b)(2) must be submitted to the insurer when the
23 provider submits a request to the insurer for verification of
24 coverage. The copies must be accompanied by a letter from the
25 provider attesting that the copies are true and correct copies of
26 the documents received by the provider. Nothing in this subsection
27 affects the right of an insurer to contest the validity of any

1 insurance policy.

2 (d) If the provider submits to the insurer a copy of
3 independent evidence under Subsection (b)(2) on submission of a
4 request to the insurer to effect the transfer of the policy to the
5 provider, the copy is deemed to establish that the life settlement
6 contract satisfies the requirements of this section.

7 Sec. 1111.009. REPORTING REQUIREMENTS AND PRIVACY. (a)
8 Each registered provider shall file with the commissioner on or
9 before March 1 of each year an annual statement containing the
10 information the commissioner prescribes by rule.

11 (b) In addition to any other information required by
12 commissioner rule, the annual statement required under Subsection
13 (a) must specify:

14 (1) the total number, aggregate face amount, and life
15 settlement proceeds of insurance policies settled during the
16 immediately preceding calendar year; and

17 (2) a breakdown of the information described by
18 Subdivision (1) by policy issue year.

19 (c) The information required under Subsection (b) is
20 limited to transactions in which the owner is a resident of this
21 state and does not include:

22 (1) individual transaction information regarding the
23 business of life settlements; or

24 (2) information that reasonably could be used to
25 identify the owner or the insured.

26 (d) Each provider who wilfully fails to file the annual
27 statement required by this section, or who wilfully fails to reply

1 not later than the 30th day after the date of a written inquiry by
2 the department in connection with the annual statement, is subject,
3 after notice and an opportunity for a hearing, to an administrative
4 penalty of up to \$250 per day of delay, not to exceed \$25,000 in the
5 aggregate, for each failure. A penalty imposed under this
6 subsection is in addition to other penalties provided by this
7 chapter.

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

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

18 (2) is necessary to effect the sale of life settlement
19 contracts, or interests in those contracts, as investments, if:

20 (A) the sale is conducted in accordance with
21 applicable state and federal securities laws; and

22 (B) the owner and the insured have both provided
23 prior written consent to the disclosure;

24 (3) is provided:

25 (A) in response to an investigation or
26 examination by the commissioner or any other governmental officer
27 or agency; or

1 (B) under the investigation of fraud
2 requirements of Subtitle F, Title 5;

3 (4) is a term or condition to the transfer of a policy
4 by one provider to another provider, in which case the receiving
5 provider is required to comply with the confidentiality
6 requirements of this section;

7 (5) is necessary to allow the provider or broker or
8 their authorized representatives to make contacts for the purpose
9 of determining health status; or

10 (6) is required to purchase stop loss coverage.

11 (f) For the purposes of Subsection (e)(5), the term
12 "authorized representative" does not include a person who has or
13 may have any financial interest in the life settlement contract
14 other than a provider, licensed broker, financing entity, related
15 provider trust, or special purpose entity. A provider or broker
16 must require its authorized representative to agree in writing to
17 adhere to the privacy provisions of this subchapter.

18 (g) Nonpublic personal information solicited or obtained in
19 connection with a proposed or actual life settlement contract is
20 subject to the provisions applicable to financial institutions
21 under 15 U.S.C. Section 6801 et seq. and all other state and federal
22 laws relating to confidentiality of nonpublic personal
23 information.

24 SECTION 10. Section 1111.001(1), Insurance Code, is
25 repealed.

26 SECTION 11. The commissioner of insurance shall adopt all
27 rules necessary to implement Chapter 1111, Insurance Code, as

1 amended by this Act, not later than March 1, 2010.

2 SECTION 12. This Act applies only to a life settlement
3 contract entered into or renewed on or after January 1, 2010. A
4 life settlement contract entered into or renewed before January 1,
5 2010, is governed by the law as it existed immediately before the
6 effective date of this Act, and that law is continued in effect for
7 that purpose.

8 SECTION 13. This Act takes effect September 1, 2009.