

## **BILL ANALYSIS**

Senate Research Center

H.B. 2393  
By: Flynn (Janek)  
Business & Commerce  
5/4/2007  
Engrossed

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Under current Texas law, limits exist on investment parameters for the Prepaid Funeral Benefits Trust. The current investment guidelines are not consistent with a growth-oriented investment objective that the prepaid funds should target. The allowable investment alternatives limit an investor from building a diversified portfolio that is capable of achieving real growth, while minimizing risk in a prudent and disciplined manner. While the limited investment instruments may incur lower volatility in the short-term, they impose a greater risk on the prepaid fund – insufficient growth of principal.

Most states follow the so-called “prudent investor” rule requiring trustees to use the judgment and care that one would exercise in managing their own financial affairs. The consumer is well-served when that standard is applied within the context of a corporate fiduciary. Texas, however, is among the states with restrictive investment language.

H.B. 2393 establishes an additional standard of care for a trustee that is administering assets held in a prepaid funeral benefits trust. This bill also provides that the investments for the prepaid funeral benefits trust can be invested in accordance with the Texas Trust Code and particular, with the provisions of Chapter 117 of the Texas Trust Code, the Uniform Prudent Investor Act.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 3 (Section 154.258, Finance Code) of this bill.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Sections 154.255 and 154.256, Finance Code, as follows:

Sec. 154.255. STANDARD OF DUTY OF DEPOSITORY. Requires a depository described by Section 154.253(a)(1) to be held to the standard of duty of a fiduciary in holding, investing, or disbursing the money.

Sec. 154.256. New heading: STANDARD OF DUTY OF TRUSTEE. Requires a trustee described by Section 154.253(a)(2) to be held to the standard of duty of a trustee under the Texas Trust Code (Subtitle B, Title 9, Property Code), provided that the provisions of the Texas Trust Code are prohibited from being expanded, restricted, eliminated, or otherwise altered by the provisions of the trust instrument in a manner that is inconsistent with the purposes, terms, distribution requirements, and other circumstances of a trust established under this chapter. Requires a trustee to consider the trust beneficiaries to include certain persons to the extent of any beneficial interest in administering assets held in a prepaid funeral benefits trust. Deletes existing text requiring a trustee to exercise the judgment and care under the circumstances that a person of ordinary prudence, discretion, and intelligence exercises in the management of the person's own affairs, not in regard to speculation but in regard to the permanent disposition of the person's money, considering certain factors.

SECTION 2. Amends the heading to Section 154.258, Finance Code, to read as follows:

Sec. 154.258. INVESTMENT AND MANAGEMENT OF TRUST ASSETS.

SECTION 3. Amends Sections 154.258(a) and (b), Finance Code, as follows:

(a) Requires the trustee of a prepaid funeral benefits trust to invest and manage trust assets in accordance with the Uniform Prudent Investor Act (Chapter 117, Property Code), in a manner consistent with the requirements of this chapter and the purposes, terms, distribution requirements, and other circumstances of the trust, rather than providing that money in a prepaid funeral benefits trust may be invested only in a certain manner.

(b) Authorizes the Finance Commission of Texas (commission) to adopt reasonable rules to administer and clarify law regarding the investment and management of prepaid funeral benefits trust funds, provided that the rules are consistent with the Uniform Prudent Investor Act (Chapter 117, Property Code), the requirements of this chapter, and the purposes, terms, distribution requirements, and other circumstances of a prepaid funeral benefits trust, including certain rules.

SECTION 4. Repealer: Sections 154.258(c) (related to investments of a permit holder's money), (d) (related to investments of a permit holder's money), and (e) (relating to a waiver of Subsections (c) and (d) by the commission), Finance Code, and Section 154.259 (Disposal of Nonconforming Investments), Finance Code.

SECTION 5. Effective date: September 1, 2007.