

By: Flynn

H.B. No. 2393

A BILL TO BE ENTITLED

AN ACT

relating to the investment and management of assets held in a prepaid funeral benefits trust.

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

SECTION 1. Sections 154.255 and 154.256, Finance Code, are amended to read as follows:

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

Sec. 154.256. STANDARD OF DUTY [~~CARE~~] OF TRUSTEE. A trustee described by Section 154.253(a)(2) shall 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 may not be 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. In [~~, in~~] administering assets held in a prepaid funeral benefits trust, a trustee shall consider the trust beneficiaries to include the following two classes of persons to the extent of any beneficial interest:

(1) funeral providers or other persons entitled to payment after delivering a contracted funeral for which funds have been deposited in trust; and

1           (2) purchasers of or beneficiaries designated in  
2 prepaid funeral benefits contracts for which funds have been  
3 deposited in trust who:

4                   (A) are entitled to receive a contracted funeral;  
5 or

6                   (B) have the right to cancel a contract under  
7 Section 154.155 if not waived under Section 154.156 ~~[shall exercise~~  
8 ~~the judgment and care under the circumstances that a person of~~  
9 ~~ordinary prudence, discretion, and intelligence exercises in the~~  
10 ~~management of the person's own affairs, not in regard to~~  
11 ~~speculation but in regard to the permanent disposition of the~~  
12 ~~person's money, considering:~~

13                   ~~[(1) the probable income from and probable increase in~~  
14 ~~value of the person's capital,~~

15                   ~~[(2) the safety of the person's capital; and~~

16                   ~~[(3) the investment of all the assets of the trust the~~  
17 ~~trustee has the power to administer rather than the prudence of a~~  
18 ~~single investment of the trust].~~

19           SECTION 2. The heading to Section 154.258, Finance Code, is  
20 amended to read as follows:

21           Sec. 154.258. INVESTMENT AND MANAGEMENT OF TRUST ASSETS  
22 [PERMITTED INVESTMENTS].

23           SECTION 3. Sections 154.258(a) and (b), Finance Code, are  
24 amended to read as follows:

25           (a) The trustee of a prepaid funeral benefits trust shall  
26 invest and manage trust assets in accordance with the Uniform  
27 Prudent Investor Act (Chapter 117, Property Code), in a manner

1 consistent with the requirements of this chapter and the purposes,  
2 terms, distribution requirements, and other circumstances of the  
3 trust ~~[Money in a prepaid funeral benefits trust may be invested~~  
4 ~~only in:~~

5 ~~[(1) demand deposits, savings accounts, certificates~~  
6 ~~of deposit, or other accounts issued by financial institutions if~~  
7 ~~the amounts deposited in those accounts are fully covered by~~  
8 ~~federal deposit insurance or otherwise fully secured by a separate~~  
9 ~~fund of securities in the manner provided by Section 184.301,~~  
10 ~~Finance Code, and rules adopted under that section;~~

11 ~~[(2) bonds, evidences of indebtedness, or obligations~~  
12 ~~of the United States or an instrumentality of the United States;~~

13 ~~[(3) bonds, evidences of indebtedness, or obligations~~  
14 ~~the principal and interest of which are guaranteed by the full faith~~  
15 ~~and credit of the United States;~~

16 ~~[(4) bonds of a state or local government that are~~  
17 ~~exempt from federal income taxation and that are rated:~~

18 ~~[(A) "Aa" or better by Moody's bond rating~~  
19 ~~service; or~~

20 ~~[(B) "AA" or better by Standard and Poor's bond~~  
21 ~~rating service;~~

22 ~~[(5) bonds, evidences of indebtedness, or obligations~~  
23 ~~of corporations organized under state or federal law and that are~~  
24 ~~rated:~~

25 ~~[(A) "A" or better by Moody's bond rating~~  
26 ~~service; or~~

27 ~~[(B) "A" or better by Standard and Poor's bond~~

1 ~~rating service;~~

2 ~~[(6) notes, evidences of indebtedness, or~~  
3 ~~participation in notes or evidences of indebtedness, secured by a~~  
4 ~~first lien on real property located in the United States, if the~~  
5 ~~amount of each obligation does not exceed 90 percent of the value of~~  
6 ~~the real property securing that obligation;~~

7 ~~[(7) common stock of a corporation that is organized~~  
8 ~~under state or federal law and:~~

9 ~~[(A) has a net worth of at least \$1 million; or~~

10 ~~[(B) will have a net worth of at least \$1 million~~  
11 ~~after completion of a securities offering to which the trust is~~  
12 ~~subscribing;~~

13 ~~[(8) preferred stock of a corporation organized under~~  
14 ~~state or federal law and that is rated:~~

15 ~~[(A) "Baa" or better by Moody's bond rating~~  
16 ~~service; or~~

17 ~~[(B) "BBB" or better by Standard and Poor's bond~~  
18 ~~rating service;~~

19 ~~[(9) investments not covered by this subsection,~~  
20 ~~including real property, oil and gas interests, and limited~~  
21 ~~partnerships;~~

22 ~~[(10) mutual funds, collective investment funds, or~~  
23 ~~similar participative investment funds, the assets of which are~~  
24 ~~invested only in investments that are permitted under this section~~  
25 ~~and that, if aggregated with other investments, meet the percentage~~  
26 ~~limitations specified by this section; and~~

27 ~~[(11) other investments the department approves in~~

1 ~~writing~~].

2 (b) The commission may adopt reasonable rules to administer  
3 and clarify law regarding the investment and management of prepaid  
4 funeral benefits trust funds, provided that the rules are  
5 consistent with the Uniform Prudent Investor Act (Chapter 117,  
6 Property Code), the requirements of this chapter, and the purposes,  
7 terms, distribution requirements, and other circumstances of a  
8 prepaid funeral benefits trust, including rules to:

9 (1) define trust and investment terms;

10 (2) specify standards applicable to the written  
11 investment plan required by Section 154.257; and

12 (3) establish guidelines, rebuttable presumptions, or  
13 safe harbor provisions with respect to suitable investments and  
14 investment strategies for a prepaid funeral benefits trust. [Not  
15 ~~more than 70 percent of the money related to a single permit holder~~  
16 ~~may be invested in investments described by Subsection (a)(5), (6),~~  
17 ~~(7), or (8).]~~

18 SECTION 4. The following provisions are repealed:

19 (1) Sections 154.258(c), (d), and (e), Finance Code;

20 and

21 (2) Section 154.259, Finance Code.

22 SECTION 5. This Act takes effect September 1, 2007.