

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) 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.

(b) A depository 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) in holding, investing, or disbursing the money.

Sec. 154.256. STANDARD OF CARE OF TRUSTEE. A trustee, in administering assets held in a prepaid funeral benefits trust, is subject to the standard provided in the Texas Trust Code by Section 117.004(b), Property Code ~~[shall 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,~~

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

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

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

5 SECTION 2. Sections 154.258(a) and (b), Finance Code, are
6 amended to read as follows:

7 (a) Money in a prepaid funeral benefits trust may be
8 invested in accordance with the Texas Trust Code (Subtitle B, Title
9 9, Property Code), and the trustee of a prepaid funeral benefits
10 trust shall invest and manage the investment of the principal of the
11 trust in accordance with the Texas Trust Code ~~[only in:~~

12 ~~[(1) demand deposits, savings accounts, certificates~~
13 ~~of deposit, or other accounts issued by financial institutions if~~
14 ~~the amounts deposited in those accounts are fully covered by~~
15 ~~federal deposit insurance or otherwise fully secured by a separate~~
16 ~~fund of securities in the manner provided by Section 184.301,~~
17 ~~Finance Code, and rules adopted under that section,~~

18 ~~[(2) bonds, evidences of indebtedness, or obligations~~
19 ~~of the United States or an instrumentality of the United States,~~

20 ~~[(3) bonds, evidences of indebtedness, or obligations~~
21 ~~the principal and interest of which are guaranteed by the full faith~~
22 ~~and credit of the United States,~~

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

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

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

1 ~~rating service;~~

2 ~~[(5) bonds, evidences of indebtedness, or obligations~~
3 ~~of corporations organized under state or federal law and that are~~
4 ~~rated;~~

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

7 ~~[(B) "A" or better by Standard and Poor's bond~~
8 ~~rating service;~~

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

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

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

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

20 ~~[(8) preferred stock of a corporation organized under~~
21 ~~state or federal law and that is rated;~~

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

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

26 ~~[(9) investments not covered by this subsection,~~
27 ~~including real property, oil and gas interests, and limited~~

1 ~~partnerships;~~

2 ~~[(10) mutual funds, collective investment funds, or~~
3 ~~similar participative investment funds, the assets of which are~~
4 ~~invested only in investments that are permitted under this section~~
5 ~~and that, if aggregated with other investments, meet the percentage~~
6 ~~limitations specified by this section; and~~

7 ~~[(11) other investments the department approves in~~
8 ~~writing].~~

9 (b) An investment must be made at not more than the
10 prevailing market value of the securities at the time of
11 acquisition. ~~[Not more than 70 percent of the money related to a~~
12 ~~single permit holder may be invested in investments described by~~
13 ~~Subsection (a)(5), (6), (7), or (8).]~~

14 SECTION 3. The following provisions are repealed:

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

17 (2) Section 154.259, Finance Code.

18 SECTION 4. This Act takes effect September 1, 2007.