

By: Flynn (Senate Sponsor - Janek) H.B. No. 2393  
(In the Senate - Received from the House April 30, 2007;  
May 2, 2007, read first time and referred to Committee on Business  
and Commerce; May 9, 2007, reported favorably by the following  
vote: Yeas 8, Nays 0; May 9, 2007, sent to printer.)

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

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

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

(B) have the right to cancel a contract under  
Section 154.155 if not waived under Section 154.156 ~~[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,~~

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

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

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

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

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

(a) The trustee of a prepaid funeral benefits trust shall  
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 ~~[Money in a prepaid funeral benefits trust may be invested  
only in:~~

~~[(1) demand deposits, savings accounts, certificates  
of deposit, or other accounts issued by financial institutions if  
the amounts deposited in those accounts are fully covered by~~

~~federal deposit insurance or otherwise fully secured by a separate fund of securities in the manner provided by Section 184.301, Finance Code, and rules adopted under that section;~~

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(b) The commission may 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 rules to:

(1) define trust and investment terms;

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

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

SECTION 4. The following provisions are repealed:

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

(2) Section 154.259, Finance Code.

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

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