

By: Flynn

H.B. No. 3436

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of prepaid funeral benefits.

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

SECTION 1. Section 154.101, Finance Code, is amended to read as follows:

Sec. 154.101. PERMIT REQUIREMENT. Subject to Section 154.1011, a [A] person must hold a permit issued under this subchapter to:

(1) sell prepaid funeral benefits, or accept money for prepaid funeral benefits, in this state under any contract; or

(2) solicit an individual's designation of prepaid funeral benefits to be provided out of a fund, investment, security, or contract, including a contract or policy of insurance authorized, and sold under a license issued, by the Texas Department of Insurance, to be created or purchased by that individual at the suggestion or solicitation of the seller.

SECTION 2. Subchapter C, Chapter 154, Finance Code, is amended by adding Section 154.1011 to read as follows:

Sec. 154.1011. INSURANCE COMPANY PROVIDING INSURANCE-FUNDED PREPAID FUNERAL BENEFITS. (a) Except as provided by this section, only an insurance company authorized to engage in business in this state may hold a permit to sell insurance-funded prepaid funeral benefits in this state.

(b) If the domiciliary law of an insurance company

1 authorized to engage in business in this state does not permit the
2 insurance company to hold a permit to sell insurance-funded prepaid
3 funeral benefits in this state, the insurance holding company for
4 the insurance company may hold the permit. The agreement between
5 the insurance holding company and the insurance company regarding
6 services related to sale and servicing of insurance policies to
7 fund prepaid funeral benefits must be submitted to the Texas
8 Department of Insurance for review as provided by Section 823.103,
9 Insurance Code.

10 (c) An insurance company or its insurance holding company
11 must hold a permit under this chapter before the insurance company
12 may assume an existing insurance policy funding a prepaid funeral
13 benefits contract subject to this chapter.

14 (d) A seller of insurance-funded prepaid funeral benefits
15 that is not an insurance company or an insurance holding company and
16 that holds a permit under this chapter on September 1, 2007, may
17 continue to renew and hold a permit under this chapter if the seller
18 complies with all applicable requirements of this chapter and rules
19 adopted under this chapter other than the requirement that the
20 seller be an insurance company or an insurance holding company.

21 SECTION 3. Section 154.156(a), Finance Code, is amended to
22 read as follows:

23 (a) The purchaser of a prepaid funeral benefits contract may
24 irrevocably waive the purchaser's right to cancel the contract
25 under Section 154.155. The waiver must be in a separate writing
26 signed by the purchaser and the seller not earlier than the 15th day
27 after the date of the purchase of the contract. The form of the

1 waiver must comply with the requirements for the form of a sales
2 contract under Section 154.151. With respect to an
3 insurance-funded prepaid funeral benefits contract, neither a
4 waiver of the purchaser's right to cancel the funding insurance
5 policy nor an irrevocable assignment of benefits under Section
6 154.206 may occur earlier than the 15th day after the date of the
7 purchase of the contract.

8 SECTION 4. Section 154.202, Finance Code, is amended to
9 read as follows:

10 Sec. 154.202. [~~EXECUTION OF~~] CONTRACT AND [~~IN CONJUNCTION~~
11 ~~WITH APPLICATION FOR~~] POLICY CONSTITUTE SINGLE TRANSACTION. (a)
12 An insurance-funded prepaid funeral benefits contract must be
13 executed in conjunction with the application for the issuance of
14 the insurance policy or policies with an aggregate initial face
15 value that does not materially exceed the total contract price.

16 (b) The prepaid funeral benefits contract, the application
17 for issuance of the insurance policy, and the subsequently issued
18 insurance policy collectively comprise a single transaction for the
19 purpose of purchasing prepaid funeral benefits.

20 SECTION 5. Section 154.203(a), Finance Code, is amended to
21 read as follows:

22 (a) Premiums [~~A seller shall remit to the insurance company~~
23 ~~the premiums~~] collected by the seller, or by an agent for the
24 seller, for an insurance policy that funds prepaid funeral benefits
25 must be credited to the purchaser's insurance policy not later than
26 the earlier of:

27 (1) the 30th day after the date of collection from the

1 contract purchaser; or

2 (2) any deadline provided by the Insurance Code.

3 SECTION 6. Section 154.206, Finance Code, is amended to
4 read as follows:

5 Sec. 154.206. ASSIGNMENT OF RIGHT TO BENEFITS. Subject to
6 Section 154.156(a), the [The] purchaser of an insurance-funded
7 prepaid funeral benefits contract may irrevocably assign the
8 purchaser's ownership of and rights to benefits under the insurance
9 policy to the seller, the funeral provider, the trustee, or other
10 person solely for the purposes specified and only to the extent
11 permitted by this chapter. If the aggregate initial face value of
12 the funding insurance policy or policies exceeds the total contract
13 price, the benefits attributable to the excess face value may not be
14 assigned under this section.

15 SECTION 7. Section 154.207, Finance Code, is amended to
16 read as follows:

17 Sec. 154.207. WITHDRAWAL OF BENEFITS PAYABLE UNDER
18 POLICY. (a) The seller or funeral provider may withdraw the
19 benefits payable under an insurance policy funding prepaid funeral
20 benefits after:

21 (1) the beneficiary named in the contract dies;

22 (2) the funeral service is completed in compliance
23 with applicable law; [and]

24 (3) the seller has completed the documentation
25 required by this chapter or rules adopted under this chapter
26 regarding performance of the prepaid funeral benefits contract in
27 accordance with its terms, subject to any modifications permitted

1 by law; and

2 (4) the insurance company is presented with:

3 (A) appropriate affidavits by an officer or
4 designated agent of the seller on forms prescribed by the
5 department, attesting to matters required by Subsections (a)(2) and
6 (3); and

7 (B) a certified copy of the death certificate.

8 (b) Notwithstanding requirements in Subchapter B, Chapter
9 542, Insurance Code, or Subchapter C, Chapter 1103, Insurance Code,
10 relating to timely payment of policy proceeds, an insurance company
11 may not disburse proceeds of an insurance policy used to fund
12 prepaid funeral benefits under this chapter to a funeral provider
13 until the insurance company receives the affidavits required under
14 Subsection (a)(4)(A). If an insurance company does not receive the
15 affidavits within 60 days after the date of receipt of due proof of
16 loss, the assignment to the funeral provider has no further effect
17 and the insurance company shall pay the proceeds to the
18 beneficiaries otherwise entitled under the policy.

19 (c) The seller shall maintain copies of the affidavits, the
20 [and] death certificate, and other required documentation for
21 examination by the department.

22 SECTION 8. Subchapter E, Chapter 154, Finance Code, is
23 amended by adding Sections 154.208 and 154.209 to read as follows:

24 Sec. 154.208. RELATIONSHIP TO INSURANCE LAWS. (a) A seller
25 of an insurance-funded prepaid funeral benefits contract must
26 comply with this chapter and applicable provisions of the Insurance
27 Code, and no presumption exists that either this chapter or the

1 Insurance Code takes precedence over the other. To the extent
2 applicable, the offer, sale, and performance of an insurance-funded
3 prepaid funeral benefits contract must comply with both this
4 chapter and the Insurance Code. In interpreting this section, the
5 presumption is that:

6 (1) both this chapter and the Insurance Code are
7 intended to be effective according to their terms;

8 (2) a just and reasonable result feasible of execution
9 is intended; and

10 (3) public interest is favored over any private
11 interest.

12 (b) This chapter does not limit the jurisdiction of the
13 Texas Department of Insurance with respect to insurance-related
14 matters arising out of the offer and sale of insurance-funded
15 prepaid funeral benefits. An insurer in this state may not conduct
16 any business not authorized by the Insurance Code.

17 (c) In developing rules that apply to insurance-funded
18 prepaid funeral benefits, the commission shall work in conjunction
19 with the commissioner of insurance to the extent practicable.

20 Sec. 154.209. REPRESENTATIONS REGARDING LIFE INSURANCE.

21 (a) A person that markets and sells life insurance for a purpose
22 other than funding a prepaid funeral benefits contract subject to
23 this chapter may not represent or imply that the life insurance is
24 intended to fund prearranged funeral services or merchandise
25 through the use of:

26 (1) a noncontractual checklist of funeral services and
27 merchandise, other than cash advance items, that invites or permits

1 the purchaser to both make selections for a funeral and designate a
2 funeral provider; or

3 (2) a contingent or revocable assignment of benefits
4 under the insurance policy to a designated funeral provider.

5 (b) A violation of this section is an unfair method of
6 competition or an unfair or deceptive practice in the business of
7 insurance under Subchapter B, Chapter 541, Insurance Code.

8 SECTION 9. Section 154.412, Finance Code, is amended by
9 adding Subsection (f) to read as follows:

10 (f) After the issuance of an order under this section, the
11 commissioner may initiate an administrative claim for ancillary
12 relief, including a claim for costs incurred in the administration,
13 transfer, or other disposition of the seized assets and records, or
14 costs reasonably expected to be incurred in connection with
15 administration and performance of any outstanding prepaid funeral
16 benefits contracts sold by a person subject to the order. The
17 remedy provided by this subsection is not exclusive and does not
18 limit the discretion of the commissioner to seek additional
19 remedies authorized under this subchapter.

20 SECTION 10. Sections 154.003 and 154.004, Finance Code, are
21 repealed.

22 SECTION 11. This Act takes effect immediately if it
23 receives a vote of two-thirds of all the members elected to each
24 house, as provided by Section 39, Article III, Texas Constitution.
25 If this Act does not receive the vote necessary for immediate
26 effect, this Act takes effect September 1, 2007.