

By: Janek

S.B. No. 1316

A BILL TO BE ENTITLED

AN ACT

1  
2 relating to the investment and management of assets held in a  
3 prepaid funeral benefits trust.

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

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

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

11 (b) A depository described by Section 154.253(a)(2) shall  
12 be held to the standard of duty of a trustee under the Texas Trust  
13 Code (Subtitle B, Title 9, Property Code) in holding, investing, or  
14 disbursing the money.

15 Sec. 154.256. STANDARD OF CARE OF TRUSTEE. A trustee, in  
16 administering assets held in a prepaid funeral benefits trust, is  
17 subject to the standard provided in the Texas Trust Code by Section  
18 117.004(b), Property Code [~~shall exercise the judgment and care~~  
19 ~~under the circumstances that a person of ordinary prudence,~~  
20 ~~discretion, and intelligence exercises in the management of the~~  
21 ~~person's own affairs, not in regard to speculation but in regard to~~  
22 ~~the permanent disposition of the person's money, considering:~~

23 [~~(1) the probable income from and probable increase in~~  
24 ~~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.