

By: Flynn

H.B. No. 3762

Substitute the following for H.B. No. 3762:

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C.S.H.B. No. 3762

A BILL TO BE ENTITLED

AN ACT

relating to regulation of prepaid funeral benefits.

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

SECTION 1. Section 154.002, Finance Code, is amended by amending Subdivisions (1) and (6) and adding Subdivisions (1-a), (6-a), and (14) to read as follows:

(1) "Cash advance item" has the meaning assigned by 16 C.F.R. Section 453.1.

(1-a) "Commission" means the Finance Commission of Texas.

(6) "Funeral provider" means the person ~~[funeral home]~~ designated in a prepaid funeral benefits contract that has agreed to provide the specified prepaid funeral benefits.

(6-a) "Insurance-funded contract" means an insurance-funded prepaid funeral benefits contract.

(14) "Trust-funded contract" means a trust-funded prepaid funeral benefits contract.

SECTION 2. Section 154.052(a), Finance Code, is amended to read as follows:

(a) The department may require a permit holder that has outstanding contracts for prepaid funeral benefits to submit an annual report in the form required by rule of the commission ~~[the department]~~.

SECTION 3. Section 154.053, Finance Code, is amended to

1 read as follows:

2 Sec. 154.053. RECORDS; EXAMINATION. (a) A permit holder
3 ~~[seller]~~ that has outstanding contracts for prepaid funeral
4 benefits shall maintain records as ~~[in this state any record]~~
5 required by rule of the commission.

6 (b) The [the] department shall examine the records of each
7 permit holder at least once every 18-month period, except that the
8 department may examine a permit holder more frequently if:

9 (1) the permit holder:

10 (A) has received a uniform risk rating, under
11 standards adopted by rule of the commission, that is less than
12 satisfactory as a result of the permit holder's most recent
13 examination; or

14 (B) is subject to a formal enforcement proceeding
15 or order by the commissioner; or

16 (2) the commissioner determines in the exercise of
17 discretion that additional examination is necessary to safeguard
18 the interests of purchasers and beneficiaries and to efficiently
19 enforce applicable law.

20 (c) The department may defer an examination under this
21 section for not more than six months if the commissioner determines
22 that deferment of the examination is necessary for the efficient
23 enforcement of applicable law.

24 (d) Any record may be maintained and provided for
25 examination in electronic format if the record is reliable and can
26 be retrieved in a timely manner.

27 (e) The department, in consultation with the advisory

1 committee established under Section 154.208, shall develop an
2 examination manual that includes procedures intended to reduce the
3 expense of examinations under this section to the department and
4 the permit holders ~~[to determine whether the seller is complying~~
5 ~~with this chapter. The record is subject to annual examination by~~
6 ~~the department or its agent and to additional examinations the~~
7 ~~department considers necessary.~~

8 ~~[(b) The department may examine or audit a record relating~~
9 ~~to prepaid funeral benefits at any place and in any manner the~~
10 ~~department considers necessary to protect the interests of the~~
11 ~~purchasers or beneficiaries.~~

12 ~~[(c) As part of the examination, the department shall be~~
13 ~~given access to records relating to prepaid funeral benefits of~~
14 ~~each entity holding a deposit or premium for an annuity contract or~~
15 ~~a policy of insurance under the account and to any other record~~
16 ~~necessary to protect the interests of the beneficiaries].~~

17 SECTION 4. Section 154.102, Finance Code, is amended to
18 read as follows:

19 Sec. 154.102. PERMIT APPLICATION; FEE. To obtain a permit
20 to sell or continue to sell prepaid funeral benefits, a person must:

21 (1) be one of the following, if the person proposes to
22 offer and sell prepaid funeral benefits contracts subject to
23 Subchapter E:

24 (A) a funeral provider;
25 (B) an insurance company; or
26 (C) the insurance holding company for an
27 insurance company if the insurance company does not have the

1 authority under its domiciliary law to directly hold a permit
2 issued under this chapter;

3 (2) be a funeral provider, if the person proposes to
4 offer and sell prepaid funeral benefits contracts subject to
5 Subchapter F;

6 (3) file an application for a permit with the
7 department on a form prescribed by the department;

8 (4) [(2)] pay a filing fee in an amount set by the
9 commission under Section 154.051; and

10 (5) [(3)] if applicable, pay extraordinary expenses
11 required for out-of-state investigation of the person.

12 SECTION 5. Sections 154.106(a) and (b), Finance Code, are
13 amended to read as follows:

14 (a) A permit holder shall notify [~~by registered mail~~] the
15 department and either the depository of the money held under
16 Subchapter F or the issuer of insurance policy funding contracts
17 under Subchapter E of a contract to transfer [~~in the~~] ownership of
18 the permit holder's business not later than the seventh day after
19 the date the contract [~~transfer~~] is executed [~~completed~~].

20 (b) If the proposed transferee [~~transfer is to a person who~~]
21 is not a permit holder, the proposed transferee [~~person~~] shall file
22 an application for a permit with the department in accordance with
23 this subchapter. If the application is complete, the commissioner
24 shall approve or deny the application before the 16th [~~not later~~
25 ~~than the 30th~~] day after the date the application was received. The
26 transfer of prepaid funeral benefits contracts of the permit holder
27 that is the transferor may not occur until after the date a permit

1 is issued to the applicant that is the transferee [~~transfer is~~
2 ~~completed~~].

3 SECTION 6. Section 154.109(b), Finance Code, is amended to
4 read as follows:

5 (b) The commissioner by order may refuse to renew a permit
6 if the commissioner finds, by examination or other credible
7 evidence, that the permit holder does not possess a qualification
8 required by Section 154.103(b) for issuance of an initial permit,
9 or that the permit holder:

10 (1) committed one or more of the acts described by
11 Subsection (a); and

12 (2) did not correct the violation before the 31st day
13 after the date of written notice from the commissioner.

14 SECTION 7. Chapter 154, Finance Code, is amended by adding
15 Subchapter C-1 to read as follows:

16 SUBCHAPTER C-1. PRESALE DISCLOSURES

17 Sec. 154.131. BROCHURE. (a) A seller, directly or
18 through the seller's designated agent, shall provide an
19 informational brochure to each potential purchaser of a prepaid
20 funeral benefits contract.

21 (b) The brochure must:

22 (1) describe the regulation of prepaid funeral
23 benefits contracts and the trust and insurance funding options
24 available under the law of this state; and

25 (2) include a reference to the Internet website
26 required under Section 154.132.

27 (c) The department:

1 (1) must approve an informational brochure before the
2 brochure may be used by the seller; and

3 (2) shall develop a model informational brochure that
4 complies with this section with input from consumers, permit
5 holders, insurers, and funeral providers.

6 Sec. 154.132. WEBSITE. (a) The department shall establish
7 and maintain an Internet website that provides information to
8 enable consumers to make informed decisions relating to the
9 purchase of prepaid funeral benefits.

10 (b) The website:

11 (1) must include a description of the trust and
12 insurance funding options available under the law of this state to
13 be developed with input from consumers, permit holders, insurers,
14 and funeral providers;

15 (2) may include links to and be linked from the
16 department's website, the Texas Department of Insurance website,
17 and the Texas Funeral Service Commission website; and

18 (3) may include additional information or links to
19 additional information that the department determines may be
20 helpful to consumers of prepaid funeral benefits in this state.

21 Sec. 154.133. REFERENCE OR LINK TO WEBSITE. Any sales
22 literature or a website that offers or promotes the sale of prepaid
23 funeral benefits contracts to the public must include a reference
24 or link to the Internet website required under Section 154.132.

25 SECTION 8. Sections 154.151(c) and (e), Finance Code, are
26 amended to read as follows:

27 (c) If a [A] funeral provider designated in the contract to

1 provide prepaid funeral benefits is ~~[that are]~~ not the seller
2 licensed under this chapter, ~~[sold by]~~ the funeral provider must:

3 (1) be a party to the contract; ~~[and]~~

4 (2) agree in the contract to provide those benefits;
5 and

6 (3) by signing the contract, agree to discharge the
7 responsibilities imposed on a funeral provider by Section 154.161.

8 (e) The commission ~~[Finance Commission of Texas]~~ by rule
9 shall establish a standard disclosure that must be included in each
10 contract to inform purchasers of the goods and services that will be
11 provided or excluded under the contract and the circumstances under
12 which the contract may be modified after death of the beneficiary.
13 The commission by rule may prescribe a form for the standard
14 disclosure that is designed to more closely conform to variations
15 in sales contract forms that serve different purposes.

16 SECTION 9. Subchapter D, Chapter 154, Finance Code, is
17 amended by adding Section 154.1511 to read as follows:

18 Sec. 154.1511. CASH ADVANCE ITEMS: NON-GUARANTEED
19 MERCHANDISE AND SERVICES. (a) A purchaser of a prepaid funeral
20 benefits contract may agree to advance funds for all or any portion
21 of the estimated cost of cash advance items included in a prepaid
22 funeral benefits contract, the actual cost of which are to be
23 determined by existing prices at the time the items are delivered or
24 provided in connection with at-need performance of the contracted
25 funeral.

26 (b) Cash advance items included in a prepaid funeral
27 benefits contract must be clearly grouped together and segregated

1 from prepaid funeral benefits in a manner that will permit the
2 average consumer to easily understand that:

3 (1) cash advance items are not fixed or guaranteed in
4 price; and

5 (2) additional money may be required to fully pay for
6 those items at the time of the funeral.

7 (c) A seller shall administer purchaser funds received in
8 advance for cash advance items under a prepaid funeral benefits
9 contract in the manner required by Section 154.159 or 154.203.

10 (d) After the death of the contract beneficiary, the funeral
11 provider shall apply the proportionate part of the trust or
12 insurance policy proceeds received under the contract that is
13 derived from advance payment of cash advance items to the current
14 purchase price for the items. To the extent the proportionate part
15 of contract proceeds:

16 (1) is less than the current purchase price for the
17 cash advance items, the funeral provider may collect additional
18 money for the difference in exchange for delivering or providing
19 the items as part of the contracted funeral; or

20 (2) is greater than the current purchase price for the
21 cash advance items, the funeral provider shall promptly refund the
22 excess amount unless that amount is offset against other amounts
23 due to the funeral provider in connection with the contracted
24 funeral.

25 SECTION 10. Section 154.155, Finance Code, is amended by
26 amending Subsections (b) and (d) and adding Subsection (f) to read
27 as follows:

1 (b) Not later than the 30th day after the date of the
2 cancellation notice, the seller of a trust-funded contract shall
3 withdraw and pay to the purchaser money in the depository being held
4 for the purchaser's use and benefit.

5 (d) The purchaser of a trust-funded contract is entitled to
6 receive the actual amount paid by the purchaser and half of all
7 earnings attributable to that money, less the amount permitted to
8 be retained as provided by Section 154.252, except as provided by
9 Subsection (e) and by Sections 154.1511, 154.1551, [154.205] and
10 154.254.

11 (f) The cancellation of an insurance-funded contract by the
12 purchaser is subject to Section 154.205.

13 SECTION 11. Section 154.1551, Finance Code, is amended by
14 amending Subsection (a) and adding Subsections (d), (e), and (f) to
15 read as follows:

16 (a) The funeral merchandise, funeral ~~[and]~~ services, and
17 cash advance items selected in [to be provided by the seller under]
18 a fully paid prepaid funeral benefits contract may be modified
19 after the death of the beneficiary if the modification complies
20 with this section ~~[Subsection (b)]~~ or is otherwise agreed to in a
21 writing signed by the seller or funeral provider and the person
22 charged with the disposition of the beneficiary's remains by
23 Section 711.002(a), Health and Safety Code, except that[+]

24 ~~[(1)]~~ if the purchaser of the contract is also the
25 beneficiary:

26 (1) ~~[(A)]~~ the contracted funeral merchandise and
27 services may not be modified if the contract contains a clause that

prohibits modification; and

(2) ~~[(B)]~~ a modification may not change the type of disposition specified by the purchaser in the contract, whether by burial, cremation, or another alternative by which the purchaser's remains attain their final resting place, as provided by Section 711.002(g), Health and Safety Code~~[, and~~

~~[(2) the value attributed to any contracted funeral merchandise or service that is surrendered or exchanged in a modification must be computed on a comparable time-price basis with the price charged for substituted funeral merchandise or service provided as part of the modification].~~

(d) A modification of contracted funeral merchandise or services must comply with Subsection (b), and the value attributed to any contracted funeral merchandise or service that is surrendered or exchanged in the modification must be computed on a comparable time-price basis with the price charged for substituted funeral merchandise or service provided as part of the modification.

(e) A modification of cash advance items included in the contract under Section 154.1511 must comply with Subsection (f).

(f) A person charged with disposition of the beneficiary's remains may add, surrender, cancel, or modify any cash advance item included under the contract at the time the funeral is performed, provided that:

(1) the value attributed to any contracted funeral merchandise or service that is surrendered in a modification, determined as provided under Subsection (d), may be applied to the

1 unpaid cost of contracted or additional cash advance items; and
2 (2) the funeral provider promptly refunds the
3 proportionate part of the trust or insurance policy proceeds
4 received under the contract that is derived from advance payment of
5 a surrendered or canceled cash advance item to the extent the
6 proceeds are not applied to the unpaid cost of additional cash
7 advance items or additional funeral merchandise or services
8 requested by the person charged with disposition of the
9 beneficiary's remains.

10 SECTION 12. Section 154.156(a), Finance Code, is amended to
11 read as follows:

12 (a) The purchaser of a prepaid funeral benefits contract may
13 irrevocably waive the purchaser's right to cancel the contract
14 under Section 154.155. The waiver must be in a separate writing
15 signed by the purchaser and the seller and ~~[not earlier than the~~
16 ~~15th day after the date of the purchase of the contract. The form of~~
17 ~~the waiver]~~ must comply with the plain language requirements for
18 the form of a sales contract under Section 154.151.

19 SECTION 13. Section 154.160(b), Finance Code, is amended to
20 read as follows:

21 (b) The seller shall notify the department of:

22 (1) the designation not later than the 10th day after
23 the date the seller becomes subject to this chapter; and

24 (2) any change in the designation not later than the
25 10th day after ~~[within the 10-day period preceding]~~ the date of the
26 change.

27 SECTION 14. Subchapter D, Chapter 154, Finance Code, is

1 amended by adding Section 154.161 to read as follows:

2 Sec. 154.161. RESPONSIBILITIES OF FUNERAL PROVIDER. (a)
3 The funeral provider under a prepaid funeral benefits contract
4 subject to this chapter shall:

5 (1) in compliance with applicable law, protect any
6 nonpublic personal financial and health information of the
7 purchaser and contract beneficiary in the possession of the funeral
8 provider;

9 (2) after the death of the contract beneficiary:

10 (A) deliver the contracted funeral merchandise
11 and services and cash advance items required under the contract,
12 subject to Section 154.1551;

13 (B) prepare a written pre-need to at-need
14 reconciliation to verify that the specified goods and services are
15 delivered or performed for the agreed price and promptly refund any
16 contract overcharges that may be revealed by the reconciliation;

17 (C) if advance payment of cash advance items was
18 included in the contract, prepare a reconciliation of proceeds
19 applied to cash advance items; and

20 (D) retain a copy of each reconciliation until
21 the third anniversary of the date of service; and

22 (3) with respect to each prepaid funeral benefits
23 contract for which the funeral provider is not also the seller:

24 (A) sign the reconciliations required by
25 Subsection (a)(2);

26 (B) promptly deliver the records that verify
27 contract performance to the seller, including the final at-need

1 contract, the certificate of performance, and the reconciliations
2 required under Subsection (a)(2);

3 (C) if requested by the seller, correct or
4 explain any discrepancy in a reconciliation required under
5 Subsection (a)(2); and

6 (D) subject to Subsection (d), provide copies of
7 any other records or documentation related to the offer, sale, and
8 performance of the contract that are reasonably requested by the
9 seller or the department, including records related to any refund
10 required by Section 154.1511 or 154.1551.

11 (b) The seller shall report to the department any
12 discrepancy in a reconciliation required under Subsection (a)(2)
13 that remains unresolved after a request for correction is made
14 under Subsection (a)(3)(C).

15 (c) The trustee or insurance company may withhold payment to
16 the funeral provider until each document the funeral provider is
17 required to prepare and deliver to the seller, trustee, or
18 insurance company is received, properly completed, and fully
19 executed.

20 (d) The department may not request records or documentation
21 from a funeral provider under Subsection (a)(3)(D) unless:

22 (1) the seller has notified the funeral provider of a
23 discrepancy in a reconciliation and the discrepancy remains
24 unresolved after a request for correction;

25 (2) the date of contract performance by the funeral
26 provider is earlier than the third anniversary of the date of the
27 initial request; and

1 (3) the department finds that:

2 (A) the amount of the discrepancy exceeds five
3 percent of the total contract price; or

4 (B) sufficient discrepancies exist to indicate
5 the presence of an inappropriate or unlawful pattern or practice of
6 contract performance and documentation by the funeral provider.

7 (e) The department may not request a seller to obtain
8 records or documentation described by Subsection (a)(3)(D) from a
9 funeral provider if the department would be prohibited from
10 requesting the documentation directly from the funeral provider
11 because of the prohibition under Subsection (d)(2).

12 SECTION 15. Section 154.201, Finance Code, is amended to
13 read as follows:

14 Sec. 154.201. REQUIREMENTS FOR SOLICITATION OF
15 INSURANCE-FUNDED BENEFITS. A seller may not solicit an
16 individual's designation of prepaid funeral benefits to be paid
17 from ~~[a fund, investment, security, or contract, including]~~ an
18 insurance policy, unless the insurance policy meets the
19 requirements of Section 154.2021 ~~[to be created or purchased by or~~
20 ~~for that individual at the suggestion or solicitation of the~~
21 ~~seller.~~

22 ~~[(1) unless the fund is created by an insurance policy~~
23 ~~approved by the Texas Department of Insurance and issued by an~~
24 ~~insurance company licensed by the Texas Department of Insurance,~~

25 ~~[(2) except as provided by Subchapter F for~~
26 ~~trust-funded prepaid funeral benefits, or~~

27 ~~[(3) unless the fund, investment, security, or~~

~~contract has been approved by the department as safeguarding the rights and interests of the individual and the individual's heirs and assigns to substantially the same or a greater degree as provided with respect to money regulated by Subchapter F].~~

SECTION 16. Subchapter E, Chapter 154, Finance Code, is amended by adding Section 154.2021 to read as follows:

Sec. 154.2021. REQUIREMENTS FOR INSURANCE POLICIES. (a) An insurance policy used to fund prepaid funeral benefits under this chapter must:

(1) be written on a form approved by the Texas Department of Insurance;

(2) be issued by an insurance company authorized by the Texas Department of Insurance to engage in the business of insurance in this state; and

(3) contain the following statement on the cover page or otherwise within the policy or a rider to the policy: "This policy is issued to fund a prepaid funeral benefits contract subject to Chapter 154 of the Texas Finance Code. Cancellation of the prepaid funeral benefits contract does not automatically cancel this policy."

(b) The aggregate initial face value of one or more insurance policies issued to fund a prepaid funeral benefits contract may not exceed the total contract price by more than five percent unless the purchaser:

(1) receives a conspicuous written disclosure of the purpose and amount of the excess coverage and how the insurance benefit will be applied at contract maturity; and

1 (2) consents in writing to the purchase of the excess
2 coverage.

3 SECTION 17. Section 154.203, Finance Code, is amended to
4 read as follows:

5 Sec. 154.203. PAYMENT OF PREMIUMS. (a) The ~~[A seller shall~~
6 ~~remit to the insurance company the]~~ premiums ~~[collected]~~ for an
7 insurance policy that funds prepaid funeral benefits may only be
8 collected by a licensed insurance agent appointed by the insurance
9 company issuing the policy and shall be paid to the insurance
10 company in accordance with the agency agreement between the
11 insurance company and the agent ~~[not later than the 30th day after~~
12 ~~the date of collection]~~.

13 (b) Receipt of premiums by the agent of the insurance
14 company is considered receipt of premiums by the insurance company
15 for purposes of continuing the policy in force ~~[The department may~~
16 ~~require evidence of payment of premiums on an insurance policy used~~
17 ~~to create a fund to guarantee prepaid funeral benefits]~~.

18 SECTION 18. Section 154.205, Finance Code, is amended to
19 read as follows:

20 Sec. 154.205. ~~[AMOUNT PAYABLE ON]~~ CANCELLATION OF
21 INSURANCE-FUNDED CONTRACT. (a) A purchaser of an
22 insurance-funded prepaid funeral benefits contract may cancel the
23 contract before maturity by giving written notice of cancellation
24 to the permit holder. The permit holder shall maintain copies of
25 the written notice of cancellation until the third anniversary of
26 the date of receipt of notice ~~[who cancels the contract during the~~
27 ~~first year of the contract when payments required under the~~

1 ~~contract are current is entitled to receive the cash surrender~~
2 ~~value of the policy]~~.

3 (b) Cancellation of the contract under Subsection (a) does
4 not automatically cancel the insurance policy funding the prepaid
5 funeral benefits contract. The insurance policy may be canceled in
6 accordance with the terms and conditions of the policy in exchange
7 for the policy's cash surrender value.

8 SECTION 19. Section 154.206, Finance Code, is amended to
9 read as follows:

10 Sec. 154.206. ASSIGNMENT OF RIGHT TO BENEFITS. (a) The
11 purchaser of an insurance-funded ~~[prepaid funeral benefits]~~
12 contract may ~~[irrevocably]~~ assign the purchaser's ownership of and
13 rights to benefits under the insurance policy to the seller, the
14 funeral provider, the trustee, or other person.

15 (b) An assignment to the seller, the funeral provider, or an
16 affiliated trustee may not be made irrevocable unless:

17 (1) the assignment is made solely to facilitate the
18 eligibility of the purchaser under Title XIX, Social Security Act
19 (42 U.S.C. Section 1396 et seq.), or other law providing for a
20 public assistance program; or

21 (2) the assignee is specifically prohibited from
22 exercising any right under the policy except administration of the
23 benefits.

24 (c) An assignee under this section is subject to a fiduciary
25 duty to apply the insurance policy benefits as provided by the
26 contract and this chapter.

27 SECTION 20. Section 154.207, Finance Code, is amended to

1 read as follows:

2 Sec. 154.207. RECEIPT ~~[WITHDRAWAL]~~ OF BENEFITS PAYABLE
3 UNDER POLICY. (a) A ~~[The]~~ seller or funeral provider that has been
4 assigned ~~[may withdraw]~~ the benefits payable under an insurance
5 policy funding prepaid funeral benefits may not receive payment of
6 the benefits until ~~[after]~~:

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

8 (2) the funeral service is completed; ~~[and]~~

9 (3) the funeral provider has completed the provider's
10 obligations under Section 154.161(a) with respect to the contract;
11 and

12 (4) the insurance company is presented with:

13 (A) certification from the funeral provider
14 attesting to matters required by Subsections (a)(2) and (3)
15 ~~[appropriate affidavits by an officer or designated agent of the~~
16 ~~seller on forms prescribed by the department]~~; and

17 (B) other documents as required by the insurance
18 company to process and pay the claim ~~[a certified copy of the death~~
19 ~~certificate]~~.

20 (b) The seller shall maintain copies of the documentation
21 submitted to the insurance company and a copy of the ~~[affidavits~~
22 ~~and]~~ death certificate for examination by the department.

23 SECTION 21. Subchapter E, Chapter 154, Finance Code, is
24 amended by adding Section 154.208 to read as follows:

25 Sec. 154.208. ADVISORY COMMITTEE. (a) The commissioner
26 shall appoint an advisory committee to review and make
27 recommendations regarding the technical procedures and processes

1 employed by the department to regulate insurance-funded prepaid
2 funeral benefits and monitor compliance of sellers of
3 insurance-funded contracts under this chapter, including
4 recommendations relating to:

5 (1) the relevance and usefulness of records that the
6 department requires a seller to maintain for examination purposes;

7 (2) the existence and identification of any specific
8 record that an insurance company is required to maintain and
9 produce under the Insurance Code that could be substituted as a
10 record that meets the objectives and requirements of the department
11 under this chapter;

12 (3) the scope, efficiency, and effectiveness of
13 examination procedures employed by the department to verify
14 compliance with this chapter; and

15 (4) any other matter submitted to the committee by the
16 commissioner.

17 (b) The advisory committee is composed of eight members
18 appointed by the commissioner as follows:

19 (1) two representatives of the department;

20 (2) two representatives of funeral providers that
21 actively sell and service insurance-funded contracts in this state;
22 and

23 (3) four representatives of permit holders that
24 actively sell insurance-funded contracts in this state, provided
25 that representation should be reasonably balanced to include permit
26 holders that sell for domestic insurance companies, foreign
27 insurance companies, small insurance companies, and large

1 insurance companies.

2 (c) At the request of the commissioner, the commissioner of
3 insurance may appoint a representative of the Texas Department of
4 Insurance to serve on the advisory committee.

5 (d) Not later than the 30th day after the date all of the
6 initial appointments to the advisory committee have been made, the
7 advisory committee shall meet and select a presiding officer.
8 After the initial meeting, the advisory committee shall meet as
9 necessary at the call of the commissioner.

10 (e) A member of the advisory committee serves without
11 compensation. If authorized by the commissioner, a member of the
12 advisory committee is entitled to reimbursement for reasonable
13 expenses incurred in attending committee meetings.

14 (f) A recommendation of the advisory committee does not
15 supersede the regulatory authority of the commissioner or the
16 rulemaking authority of the commission under this chapter. The
17 commissioner shall notify the commission of each recommendation of
18 the advisory committee and the reasons for the recommendation.

19 SECTION 22. Section 154.262(a), Finance Code, is amended to
20 read as follows:

21 (a) The seller of a trust-funded prepaid funeral benefits
22 contract may withdraw an amount equal to the original contract
23 amount paid by the purchaser and the earnings attributable to the
24 contract, less the amount retained under Section 154.252, after:

- 25 (1) the beneficiary named in the contract dies;
26 (2) the funeral service is completed; ~~and~~
27 (3) the funeral provider has completed the provider's

1 obligations under Section 154.161(a) with respect to the contract;
2 and

3 (4) the depository is presented with:

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

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

8 SECTION 23. Section 154.351, Finance Code, is amended to
9 read as follows:

10 Sec. 154.351. MAINTENANCE OF GUARANTY FUND. (a) The
11 commission by rule shall establish and the department shall
12 maintain a fund to guarantee performance by sellers of prepaid
13 funeral benefits contracts of their obligations to the purchasers
14 [under the provisions of this chapter governing prepaid funeral
15 trusts].

16 (b) Except as provided by Subsection (c), for purposes of
17 claims and assessments, the department shall maintain separate
18 accounts within the fund for trust-funded contracts and
19 insurance-funded contracts.

20 (c) The advisory council under Section 154.355 may
21 authorize borrowing between accounts to facilitate prompt and
22 efficient resolution of claims against an account with an
23 insufficient balance if:

24 (1) the indebted account is obligated to pay interest
25 at a rate that will reasonably compensate the lending account for
26 lost earnings;

27 (2) required or planned assessments for the benefit of

1 the indebted account are pending and sufficient to repay the
2 lending account; and

3 (3) assessments collected for the benefit of the
4 indebted account are transferred to the lending account until the
5 borrowed amount plus interest has been repaid.

6 SECTION 24. Subchapter H, Chapter 154, Finance Code, is
7 amended by adding Section 154.3525 to read as follows:

8 Sec. 154.3525. ASSESSMENT ON INSURANCE-FUNDED CONTRACTS.

9 (a) The department shall assess and collect from a seller not more
10 than \$1 for each insurance-funded contract sold during each
11 calendar year and shall deposit the assessments in the
12 insurance-funded contract account within the fund.

13 (b) The department shall stop assessing the amounts
14 required by Subsection (a) when the amount in the insurance-funded
15 contract account reaches \$1 million.

16 SECTION 25. Section 154.355, Finance Code, is amended to
17 read as follows:

18 Sec. 154.355. ADVISORY COUNCIL. (a) An advisory council
19 composed of the following individuals shall supervise the operation
20 and maintenance of the fund:

21 (1) the commissioner or the commissioner's
22 representative;

23 (2) the attorney general or the attorney general's
24 representative;

25 (3) two representatives [~~one representative~~] of the
26 prepaid funeral industry appointed by the commission, one of whom
27 represents trust-funded prepaid funeral benefits contract sellers

1 and one of whom represents insurance-funded prepaid funeral
2 benefits contract sellers [~~Finance Commission of Texas~~]; and

3 (4) one consumer representative appointed by the
4 commission [~~Finance Commission of Texas~~].

5 (b) The prepaid funeral industry and consumer
6 representatives serve two-year terms and may not serve more than
7 four [~~two~~] terms.

8 (c) The commissioner shall render a final decision [~~cast the~~
9 ~~deciding vote~~] if there is a tie vote by members of the advisory
10 council.

11 SECTION 26. Subchapter H, Chapter 154, Finance Code, is
12 amended by adding Section 154.3551 to read as follows:

13 Sec. 154.3551. LIMIT ON LIABILITY. (a) A member of the
14 advisory council is not personally liable for damages arising from
15 the member's official act or omission under this subchapter unless
16 the act or omission is corrupt or malicious.

17 (b) The attorney general shall defend an action brought
18 against a member of the advisory council arising from an official
19 act or omission under this subchapter, including an action
20 instituted after the defendant's service with the advisory council
21 has terminated.

22 (c) The attorney general is not required to defend a member
23 of the advisory council against an action relating to:

24 (1) the disposition of a claim filed under this
25 subchapter; or

26 (2) any issue other than the applicability or effect
27 of the limitation on liability under this section.

1 (d) The commissioner on behalf of the fund, with the advice
2 and consent of the advisory council, may contract with the attorney
3 general under Chapter 771, Government Code, for legal services not
4 covered by this section.

5 SECTION 27. Section 154.356, Finance Code, is amended to
6 read as follows:

7 Sec. 154.356. ASSESSMENT ON OUTSTANDING TRUST-FUNDED
8 CONTRACTS TO PAY CLAIMS. (a) To pay a claim against the fund when
9 the balance of the trust-funded contract account [~~fund~~] is
10 insufficient to pay that claim, the advisory council may assess
11 each [~~person that holds a~~] permit holder that has outstanding
12 trust-funded contracts an amount [~~under this chapter~~] based on the
13 permit holder's proportionate share of the purchasers' deposits on
14 all outstanding trust-funded [~~prepaid funeral benefits~~] contracts
15 determined as of the end of the preceding calendar year.

16 (b) The assessments shall be deposited in the trust-funded
17 contract account within the fund and administered by the department
18 and the advisory council in accordance with commission rules.

19 (c) An assessment made under this section is in addition to
20 any assessment required by Section 154.352.

21 (d) A seller whose permit is revoked or surrendered remains
22 liable for any unpaid assessment made before the date of the
23 revocation or surrender.

24 SECTION 28. Subchapter H, Chapter 154, Finance Code, is
25 amended by adding Section 154.3565 to read as follows:

26 Sec. 154.3565. ASSESSMENT ON OUTSTANDING INSURANCE-FUNDED
27 CONTRACTS TO PAY CLAIMS. (a) To pay a claim against the fund when

1 the balance of the insurance-funded contract account is
2 insufficient to pay that claim, the advisory council may assess
3 each permit holder that has outstanding insurance-funded contracts
4 an amount based on the permit holder's proportionate share of all
5 outstanding insurance-funded contracts determined as of the end of
6 the preceding calendar year.

7 (b) The assessments shall be deposited in the
8 insurance-funded contract account within the fund and administered
9 by the department and the advisory council in accordance with
10 commission rules.

11 (c) An assessment made under this section is in addition to
12 any assessment required by Section 154.3525.

13 (d) A seller whose permit is revoked or surrendered remains
14 liable for any unpaid assessment made before the date of the
15 revocation or surrender.

16 SECTION 29. Subchapter H, Chapter 154, Finance Code, is
17 amended by adding Sections 154.358, 154.359, and 154.360 to read as
18 follows:

19 Sec. 154.358. CLAIMS AGAINST FUND. (a) The payment of a
20 claim or expense from the fund is a matter of privilege and not of
21 right, and a person does not have a vested right in the fund as a
22 beneficiary or otherwise.

23 (b) A claim against the fund may be made by:

24 (1) a purchaser of a prepaid funeral benefits
25 contract;

26 (2) a purchaser's estate;

27 (3) a permit holder or funeral provider who assumes or

1 performs a contract; or

2 (4) a claimant for the benefit of a group of purchasers
3 of prepaid funeral benefits contracts as part of a plan to arrange
4 for another permit holder to assume the contract obligations.

5 (c) An approved claim or expense relating to a trust-funded
6 contract may be paid only from the fund's trust-funded contract
7 account. An approved claim or expense relating to an
8 insurance-funded contract may be paid only from the fund's
9 insurance-funded contract account.

10 Sec. 154.359. PERMISSIBLE USES OF FUND. (a) In addition to
11 uses authorized by Section 154.354, the fund may be used to pay:

12 (1) a loss attributable to the failure or inability of
13 a permit holder to perform the permit holder's obligations under a
14 prepaid contract;

15 (2) expenses of a plan to arrange for another permit
16 holder to assume the obligations under a prepaid funeral benefits
17 contract or a group of prepaid funeral benefits contracts if the
18 commissioner finds, with the advice and consent of the advisory
19 council, that the plan is reasonable and in the best interests of
20 the contract beneficiaries;

21 (3) administrative expenses related to servicing and
22 handling outstanding prepaid funeral benefits contracts that have
23 not been assumed by another permit holder;

24 (4) expenses for administering the receivership of an
25 insolvent permit holder if the permit holder's assets are
26 insufficient to pay those expenses; and

27 (5) expenses to employ and compensate a consultant, an

1 agent, legal counsel, an accountant, and any other person
2 appropriate and consistent with the purpose of the fund, as
3 determined by the advisory council.

4 (b) The fund may not be required to pay any claimant an
5 amount that exceeds the contractual obligations specified by the
6 express written terms of the prepaid funeral benefits contract,
7 including:

8 (1) a claim based on marketing materials;

9 (2) a claim based on side letters or other documents
10 that do not comply with the requirements of this chapter;

11 (3) a claim based on misrepresentation of the benefits
12 conferred by the contract or a funding insurance policy; or

13 (4) a claim for court costs, attorney's fees,
14 penalties, or consequential or incidental damages.

15 (c) A claim may not be approved for a loss to the extent the
16 claim is insured, bonded, or otherwise covered, protected, or
17 reimbursed from other sources, including coverage provided by the
18 Texas Life, Accident, Health, and Hospital Service Insurance
19 Guaranty Association under Chapter 463, Insurance Code.

20 Sec. 154.360. SUBROGATION. (a) A person receiving a
21 benefit under this subchapter, including a payment of or on account
22 of a contractual obligation or provision of substitute or
23 alternative prepaid funeral benefits, is considered to have
24 assigned to the fund the rights under, and any cause of action
25 relating to, the prepaid funeral benefits contract to the extent of
26 the benefit received. Notwithstanding this assignment by law, the
27 commissioner may require a payee to execute a formal assignment of

1 the person's rights and cause of action to the fund as a condition
2 of receiving a right or benefit under this subchapter.

3 (b) The fund retains all common law rights of subrogation
4 and any other equitable or legal remedy that would have been
5 available to a recipient of benefits from the fund with respect to a
6 prepaid funeral benefits contract.

7 (c) The commissioner, on behalf of the fund, may bring an
8 action against any person and may employ and compensate a
9 consultant, an agent, legal counsel, an accountant, or any other
10 person the commissioner considers appropriate to collect a
11 subrogated amount. Payment shall be made from the appropriate
12 account within the fund for these services. Any recovery of a
13 subrogated amount shall be deposited in the appropriate account
14 within the fund.

15 SECTION 30. Sections 154.408(b) and (d), Finance Code, are
16 amended to read as follows:

17 (b) The order must state:

18 (1) with reasonable certainty the grounds for the
19 order; and

20 (2) the effective date of [~~which may not be before~~
21 ~~the 16th day after the date~~] the order [~~is mailed~~].

22 (d) Except as provided by Section 154.4081, the [~~The~~] order
23 takes effect as proposed, except that the order may not take effect
24 before the 16th day after the date the order is mailed unless the
25 person named in the order requests a hearing not later than the 15th
26 day after the date the order is mailed.

27 SECTION 31. Subchapter I, Chapter 154, Finance Code, is

1 amended by adding Section 154.4081 to read as follows:

2 Sec. 154.4081. EMERGENCY ORDER. (a) The commissioner may
3 issue an emergency order that takes effect immediately if the
4 commissioner finds that immediate and irreparable harm is
5 threatened to the public or a beneficiary under a prepaid funeral
6 benefits contract.

7 (b) An emergency order remains in effect unless stayed by
8 the commissioner.

9 (c) The person named in the order may request in writing an
10 opportunity for a hearing to show that the emergency order should be
11 stayed. On receipt of the request, the commissioner shall set a
12 time for the hearing before the 22nd day after the date the
13 commissioner received the request, unless extended at the request
14 of the person named in the order.

15 (d) The hearing is an administrative hearing relating to the
16 validity of findings that support immediate effect of the order.

17 SECTION 32. The heading to Section 154.412, Finance Code,
18 is amended to read as follows:

19 Sec. 154.412. SEIZURE OF PREPAID FUNERAL ACCOUNTS [~~MONEY~~]
20 AND RECORDS.

21 SECTION 33. Section 154.412, Finance Code, is amended by
22 amending Subsections (a), (c), and (d) and adding Subsections
23 (c-1), (f), and (g) to read as follows:

24 (a) The [~~After the commissioner cancels or fails to renew a~~
25 ~~permit under Section 154.109(a) or on notice to a person required to~~
26 ~~obtain a permit under this chapter, the~~] commissioner may issue an
27 order to seize accounts in which [~~the~~] prepaid funeral funds

1 ~~[money]~~, including earnings, may be ~~[where that money is]~~ held and
2 may issue an order to seize the records that relate to the sale of
3 prepaid funeral benefits if the commissioner finds, by examination
4 or other credible evidence, that the person:

5 (1) failed to deposit or remit money in accordance
6 with Subchapter E or F;

7 (2) misappropriated, converted, or illegally withheld
8 or failed or refused to pay on demand money entrusted to the person
9 that belongs to the beneficiary under a prepaid funeral benefits
10 contract;

11 (3) refused to submit to examination by the
12 department;

13 (4) was the subject of an order to cancel, suspend, or
14 refuse to renew a permit; or

15 (5) does not hold a permit or transferred the
16 ownership of its business to another person who does not hold a
17 permit ~~[and who-~~

18 ~~[(A) did not apply for a new permit before the~~
19 ~~31st day after the date the transfer was completed, or~~

20 ~~[(B) was denied a new permit].~~

21 (c) An order takes effect immediately, and remains in effect
22 unless stayed by the commissioner, if the commissioner finds that
23 immediate and irreparable harm is threatened to the public or a
24 beneficiary under a prepaid funeral benefits contract. If such a
25 threat does not exist, the order must state the effective date,
26 which may not be before the 16th day after the date the order is
27 mailed.

1 (c-1) An emergency order remains in effect unless stayed by
2 the commissioner. The person named in the order may request in
3 writing an opportunity for a hearing to show that the emergency
4 order should be stayed. On receipt of the request, the commissioner
5 shall set a time before the 22nd day after the date the commissioner
6 received the request, unless extended at the request of the person
7 named in the order. The hearing is an administrative hearing
8 relating to the findings that support immediate effect of the
9 order.

10 (d) A nonemergency ~~[An]~~ order takes effect as proposed
11 unless the person named in the order requests a hearing not later
12 than the 15th day after the date the order is mailed.

13 (f) After the issuance of an order under this section, the
14 commissioner may initiate an administrative claim for ancillary
15 relief, including a claim for:

16 (1) costs incurred in the administration, transfer, or
17 other disposition of the seized assets and records; or

18 (2) costs reasonably expected to be incurred in
19 connection with the administration and performance of any
20 outstanding prepaid funeral benefits contracts sold by a person
21 subject to the order.

22 (g) The remedy provided by Subsection (f) is not exclusive
23 and does not limit the commissioner's discretion to seek an
24 additional remedy authorized under this subchapter.

25 SECTION 34. Section 1701.005(a), Insurance Code, is amended
26 to read as follows:

27 (a) This chapter does not apply to ~~[a rider or endorsement~~

1 ~~that~~]:

2 (1) a rider or endorsement that is used at the request
3 of the holder of a policy, contract, or certificate subject to this
4 chapter and that ~~[, and~~

5 ~~[(2)]~~ relates to:

6 (A) the manner of distribution of benefits under
7 the policy, contract, or certificate; or

8 (B) the reservation of rights and benefits under
9 the policy, contract, or certificate; or

10 (2) the modification of a previously approved
11 insurance policy form for the sole purpose of adding the statement
12 required by Section 154.2021(a)(3).

13 SECTION 35. Not later than November 1, 2009, the banking
14 commissioner of Texas shall appoint the initial members of the
15 advisory committee established by Section 154.208, Finance Code, as
16 added by this Act.

17 SECTION 36. (a) Section 154.102, Finance Code, as amended
18 by this Act, applies only to an application for a new permit filed
19 on or after September 1, 2009. An application for a new permit that
20 was filed in good faith before the effective date of this Act is
21 governed by the law as it existed immediately before the effective
22 date of this Act, and that law is continued in effect for that
23 purpose.

24 (b) Section 154.102, Finance Code, as amended by this Act,
25 does not apply to the renewal of a permit originally issued before
26 September 1, 2009, if the permit is timely and continuously renewed
27 after that date and is not suspended, canceled, or nonrenewed for

1 reasons other than the requirements of Section 154.102, Finance
2 Code. An application for renewal that meets the conditions of this
3 subsection is governed by the law as it existed immediately before
4 the effective date of this Act, and that law is continued in effect
5 for that purpose.

6 (c) Section 154.151, Finance Code, as amended by this Act,
7 and Section 154.2021(b), Finance Code, as added by this Act, apply
8 only to a prepaid funeral benefits contract entered into on or after
9 January 1, 2010. A prepaid funeral benefits contract entered into
10 before January 1, 2010, is governed by the law as it existed
11 immediately before the effective date of this Act, and that law is
12 continued in effect for that purpose.

13 (d) Section 154.2021(a), Finance Code, as added by this Act,
14 applies only to an insurance policy that is delivered, issued for
15 delivery, or renewed on or after January 1, 2010. A policy
16 delivered, issued for delivery, or renewed before January 1, 2010,
17 is governed by the law as it existed immediately before the
18 effective date of this Act, and that law is continued in effect for
19 that purpose.

20 SECTION 37. (a) Subchapter H, Chapter 154, Finance Code, as
21 amended by this Act, does not apply to a loss under an
22 insurance-funded prepaid funeral benefits contract that arises
23 from or relates to the occurrence of one of the following events
24 before September 1, 2009:

- 25 (1) an event of default under the contract;
26 (2) the suspension, revocation, or refusal to renew
27 the permit of the contract seller under Chapter 154, Finance Code;

1 or

2 (3) the bankruptcy, receivership, seizure, or other
3 failure of the contract seller.

4 (b) Money in the guaranty fund on September 1, 2009, is
5 allocated to the trust-funded account within the guaranty fund
6 created by Section 154.351, Finance Code, as amended by this Act.

7 SECTION 38. A fund, investment, security, or contract
8 included in a plan approved before the effective date of this Act by
9 the Texas Department of Banking under Section 1a, Chapter 512, Acts
10 of the 54th Legislature, 1955 (Article 548b, Vernon's Texas Civil
11 Statutes), may continue in effect. Any funds paid in accordance
12 with the approved plan under a contract entered into before, on, or
13 after the effective date of this Act continue to be governed in
14 accordance with the approved plan.

15 SECTION 39. Section 154.106(c), Finance Code, is repealed.

16 SECTION 40. (a) Except as provided by Subsection (b) of
17 this section, this Act takes effect September 1, 2009.

18 (b) The following provisions take effect June 1, 2010:

19 (1) Subchapter C-1, Chapter 154, Finance Code, as
20 added by this Act; and

21 (2) Sections 154.052(a) and 154.053, Finance Code, as
22 amended by this Act.