

By: Flynn

H.B. No. 3762

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of prepaid funeral benefits; providing penalties.

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

SECTION 1. Chapter 651, Occupations Code, is amended by adding Subchapter O to read as follows:

SUBCHAPTER O. PREPAID FUNERAL BENEFITS

Sec. 651.701. DEFINITIONS. In this subchapter:

(1) "Contract beneficiary" means the person whose final disposition is the subject of the prepaid funeral benefits contract.

(2) "Crypt," "grave," "lawn crypt," "niche," and "plot" have the meanings assigned by Section 711.001, Health and Safety Code.

(3) "Financial institution" has the meaning assigned by Section 201.101, Finance Code.

(4) "Funeral provider" means the funeral home designated in a prepaid funeral benefits contract that has agreed to provide the specified prepaid funeral benefits.

(5) "Insurance policy" means a life insurance policy or annuity contract.

(6) "Permit holder" means a person that holds a permit to sell prepaid funeral benefits contracts in this state.

(7) "Prepaid" means payment for funeral merchandise or

1 services before the death of the contract beneficiary in which all  
2 or a portion of the amounts paid are placed in trust or used to pay  
3 insurance policy premiums.

4 (8) "Prepaid funeral benefits" means prepaid funeral  
5 services or prepaid funeral merchandise, but does not include a  
6 grave marker, monument, tombstone, crypt, niche, plot, or lawn  
7 crypt.

8 (9) "Prepaid funeral benefits contract" means a  
9 contract entered into by a person, a funeral provider, and a permit  
10 holder that sets out the terms for the provision of prepaid funeral  
11 benefits by the funeral provider.

12 (10) "Responsible person" means the person charged  
13 with the disposition of the remains of the contract beneficiary  
14 under Section 711.002(a), Health and Safety Code.

15 Sec. 651.702. ADMINISTRATION OF SUBCHAPTER. (a) The  
16 commission shall administer this subchapter.

17 (b) The commission may adopt reasonable rules concerning:

18 (1) fees to defray the cost of administering this  
19 subchapter;

20 (2) the keeping of records relating to the sale of  
21 prepaid funeral benefits;

22 (3) the filing of contracts and reports;

23 (4) changes in the management or control of a permit  
24 holder; and

25 (5) any other matter relating to the enforcement and  
26 administration of this subchapter.

27 Sec. 651.703. ANNUAL REPORT. (a) The commission may

1 require a permit holder with outstanding prepaid funeral benefits  
2 contracts to submit an annual report that specifies:

3 (1) the number of prepaid funeral benefits contracts  
4 in force at the beginning of the calendar year and the sum of the  
5 total contract price of those contracts;

6 (2) the total number of new prepaid funeral benefits  
7 contracts issued during the calendar year and the sum of the total  
8 contract price of those contracts;

9 (3) the total number of prepaid funeral benefits  
10 contracts that have been performed during the calendar year and the  
11 sum of the total contract price of those contracts;

12 (4) the total number of prepaid funeral benefits  
13 contracts that terminated by cancellation during the calendar year  
14 and the sum of the total contract price of those contracts; and

15 (5) the total number of prepaid funeral benefits  
16 contracts outstanding at year-end, the sum of the total contract  
17 price of contracts in force, and the total funding available for  
18 those contracts as either:

19 (A) the amount of insurance in force; or

20 (B) the amount of trust funds held for those  
21 contracts.

22 (b) The annual report must include a certification by the  
23 permit holder that states that the insurance premiums received have  
24 been paid to the appropriate insurance company, or the funds that  
25 are held in trust have been received and administered, in  
26 accordance with applicable law.

27 Sec. 651.704. RECORDS; EXAMINATION. (a) A permit holder

1 that has outstanding prepaid funeral benefits contracts shall  
2 maintain records as required by the commission. The records are  
3 subject to examination by the commission or its agent on a schedule  
4 to be determined by the commission, but in no event more frequently  
5 than once every three years unless the commission determines  
6 additional examination necessary for cause.

7 (b) As part of the examination, the commission or its agent  
8 shall be given access to records relating to prepaid funeral  
9 benefits contracts of each permit holder.

10 (c) By rule, the commission may delegate the examination of  
11 trust-funded permit holders to the Texas Department of Banking and  
12 the examination of insurance-funded permit holders to the Texas  
13 Department of Insurance, including the allocation of any  
14 examination fees under Section 651.705.

15 Sec. 651.705. EXAMINATION FEE. (a) For each examination  
16 conducted under Section 651.704, the commission may impose on the  
17 permit holder a fee in an amount set by the commission.

18 (b) The amount of the fee must be sufficient to cover the  
19 cost of the examination, including:

20 (1) salary and travel expenses for commission  
21 employees, including travel to and from the place where the records  
22 are kept; and

23 (2) any other expense necessarily incurred in  
24 conducting the examination.

25 Sec. 651.706. CONFIDENTIALITY; DISCLOSURE OF CERTAIN  
26 INFORMATION. (a) Information relating to the financial condition  
27 of a permit holder obtained by the commission directly or

1 indirectly, through examination or otherwise, other than published  
2 statements, is confidential.

3 (b) The files and records of the commission relating to the  
4 financial condition of a permit holder are confidential.

5 (c) The commission may disclose the information described  
6 by Subsection (a) or (b) to an agency, commission, or  
7 instrumentality of this or another state or the United States if the  
8 commission considers disclosure to be in the best interest of the  
9 public and necessary or proper to enforce the laws of this or  
10 another state or the United States.

11 Sec. 651.707. PERMIT REQUIREMENT. A person may not sell  
12 prepaid funeral benefits contracts in this state unless the person  
13 holds a permit issued under this subchapter.

14 Sec. 651.708. PERMIT APPLICATION; FEE. To obtain a permit  
15 to sell or continue to sell prepaid funeral benefits contracts, a  
16 person must:

17 (1) file an application for a permit with the  
18 commission on a form prescribed by the commission;

19 (2) pay a filing fee in an amount set by the commission  
20 under Section 651.702; and

21 (3) if applicable, pay extraordinary expenses  
22 required for out-of-state investigation of the person.

23 Sec. 651.709. ISSUANCE OF PERMIT. (a) The commission may  
24 investigate an applicant before issuing an initial permit.

25 (b) The commission shall approve the application and issue a  
26 permit to the applicant if the commission finds that the business  
27 ability, experience, character, financial condition, and general

fitness of the applicant warrant the public's confidence. The commission shall notify the applicant if the executive director finds otherwise.

(c) The applicant must demonstrate sufficient financial responsibility to administer all prepaid funeral benefits contracts to performance. Sufficient financial responsibility shall be presumed if the permit holder has current net worth of \$100,000 or provides the commission with a letter of credit or performance bond or guarantee from its parent company in the amount of \$100,000 in a form and from an issuer acceptable to the commission.

(d) The commission shall issue the permit within 60 days of receipt of a completed application or shall provide the applicant with written notice of the denial of the application, including the reasons for denial. The applicant on request is entitled to a hearing on the denial of the application, to be held not later than the 30th day after the date of the request.

Sec. 651.710. TERM OF PERMIT. (a) A permit is issued for a five-year term.

(b) The commission by rule may adopt a system under which permits expire on various dates during the year.

Sec. 651.711. FUNDING OF PREPAID FUNERAL BENEFITS CONTRACTS. A permit holder may elect to fund prepaid funeral benefits contracts with insurance policies under Section 651.729 or trust accounts under Section 651.730, or both.

Sec. 651.712. PROHIBITION ON TRANSFER OF PERMIT. A permit is not transferable without the prior approval of the commission.

1       Sec. 651.713. TRANSFER OF BUSINESS OWNERSHIP. (a) A  
2 person may not acquire in any manner an ownership interest in an  
3 entity that is a permit holder, unless the person has filed with the  
4 commission under oath:

5           (1) a biographical form for each person by whom or on  
6 whose behalf the acquisition is to be effected;

7           (2) a statement disclosing the substance of any  
8 disciplinary action taken by a financial or insurance regulator of  
9 this state, another state, or the United States against a person who  
10 is acquiring an ownership interest in the permit holder;

11           (3) a statement certifying that, immediately on the  
12 acquisition, the permit holder will be able to satisfy the  
13 requirements for the issuance of the permit; and

14           (4) any additional information that the commission by  
15 rule may prescribe as necessary or appropriate to the protection of  
16 the consumers of this state or as in the public interest.

17       (b) The commission may require a partnership, syndicate, or  
18 other group that is required to file a statement under Subsection  
19 (a) to provide the information under that subsection for each  
20 partner of the partnership, each member of the syndicate, group, or  
21 limited liability company, and each person who controls the partner  
22 or member. If the partner, member, or person is a corporation or  
23 other entity or the person required to file the statement under  
24 Subsection (a) is a corporation, the commission may require that  
25 the information required under that subsection be provided  
26 regarding:

27           (1) the corporation or other entity;

1           (2) each individual who is an executive officer or  
2 director of the corporation; and

3           (3) each person who is directly or indirectly the  
4 beneficial owner of more than 10 percent of the outstanding voting  
5 securities of the corporation.

6           (c) The commission may disapprove an acquisition if, after  
7 notice and opportunity for hearing, the commission determines that:

8           (1) immediately on the acquisition, the permit holder  
9 would not be able to satisfy the requirements for the issuance of  
10 the permit;

11           (2) the competence, trustworthiness, experience, and  
12 integrity of the persons who would control the operation of the  
13 permit holder are such that it would not be in the interest of the  
14 consumers of this state to permit the acquisition; or

15           (3) the acquisition would violate this subchapter or  
16 another law of this state, another state, or the United States.

17           (d) Notwithstanding Subsection (c), an acquisition is  
18 considered approved if the commission has not proposed to deny the  
19 requested change before the 61st day after the date the commission  
20 receives all information required by this section.

21           (e) The requirements of this section do not apply to an  
22 acquisition of ownership, directly or indirectly, that is approved  
23 by the Texas Department of Insurance, the Texas Department of  
24 Banking, or the insurance or banking regulator of any other state or  
25 the United States.

26           Sec. 651.714. REQUIRED RENEWAL FOR CERTAIN PERMIT HOLDERS.  
27 A permit holder that has outstanding prepaid funeral benefits



1 contracts shall renew its permit.

2 Sec. 651.715. RENEWAL FEE. The commission shall set the  
3 renewal fee under Section 651.702.

4 Sec. 651.716. GROUNDS FOR CANCELLATION OR SUSPENSION OF OR  
5 REFUSAL TO RENEW PERMIT. (a) The commission by order may cancel or  
6 suspend a permit if the commission finds, by examination or other  
7 credible evidence, that the permit holder:

8 (1) knowingly violated this subchapter or another law  
9 of this state relating to the sale of prepaid funeral benefits  
10 contracts, including a final order of the commission or rule of the  
11 commission;

12 (2) misrepresented or concealed a material fact in the  
13 permit application;

14 (3) obtained or attempted to obtain the permit by  
15 misrepresentation, concealment, or fraud;

16 (4) failed to maintain evidence of financial  
17 responsibility as required by Section 651.709(c); or

18 (5) failed to maintain the qualifications necessary to  
19 obtain a permit.

20 (b) The commission by order may refuse to renew a permit if  
21 the commission finds, by examination or other credible evidence,  
22 that the permit holder:

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

25 (2) did not correct the violation before the 31st day  
26 after the date of written notice from the commission.

27 (c) The commission may place on probation a permit holder

1 whose permit is suspended. If a permit suspension is probated, the  
2 commission may require the permit holder:

3 (1) to report regularly to the commission on matters  
4 that are the basis of the probation; or

5 (2) to limit its activities as prescribed by the  
6 commission.

7 Sec. 651.717. ORDER TO CANCEL, SUSPEND, OR REFUSE TO RENEW  
8 PERMIT. (a) An order issued under Section 651.716 must state:

9 (1) with reasonable certainty the grounds for the  
10 order; and

11 (2) the effective date, which may not be before the  
12 16th day after the date the order is mailed.

13 (b) The order shall be served on the person named in the  
14 order by certified mail, return receipt requested, to the last  
15 known address of the person.

16 (c) The order takes effect as proposed unless the person  
17 named in the order requests a hearing not later than the 15th day  
18 after the date the order is mailed.

19 Sec. 651.718. FORM OF CONTRACT. (a) The commission must  
20 approve all prepaid funeral benefits contract forms before their  
21 use.

22 (b) A prepaid funeral benefits contract must:

23 (1) be in writing;

24 (2) state the name and address of the permit holder  
25 selling the prepaid funeral benefits contract;

26 (3) if the funeral provider is not the permit holder,  
27 state the name and address of the funeral provider responsible for

1 providing the prepaid funeral benefits specified in the prepaid  
2 funeral benefits contract; and

3 (4) state the prepaid funeral benefits to be provided.

4 (c) A funeral provider responsible for providing prepaid  
5 funeral benefits must be a party to the prepaid funeral benefits  
6 contract.

7 (d) A prepaid funeral benefits contract, whether in English  
8 or Spanish, must be written in plain language designed to be easily  
9 understood by the average consumer. The contract must be printed in  
10 an easily readable font and type size. The commission shall adopt  
11 standards for prepaid funeral benefits contracts that comply with  
12 this subsection.

13 (e) A permit holder may represent that the commission has  
14 approved a prepaid funeral benefits contract with the following  
15 language: "The Texas Funeral Service Commission regulates the sale  
16 of prepaid funeral benefits contracts" and "The form of this  
17 contract has been approved by the commission."

18 (f) The sales price of an item not covered by this  
19 subchapter may not be increased to allocate a lesser sales price to  
20 an item covered by this subchapter.

21 (g) A purchaser of a prepaid funeral benefits contract may  
22 agree in writing to pay the permit holder a finance charge in  
23 accordance with Chapter 345, Finance Code, on any amount due the  
24 permit holder on the prepaid funeral benefits contract.

25 (h) A prepaid funeral benefits contract must clearly  
26 identify the funeral merchandise and services for which the cost is  
27 guaranteed and those for which the cost is not guaranteed, the

1 circumstances under which the guarantee is limited, and the  
2 circumstances under which the prepaid funeral benefits contract may  
3 be modified after the death of the contract beneficiary.

4 Sec. 651.719. CANCELLATION OF CONTRACT. (a) A purchaser of  
5 a prepaid funeral benefits contract may cancel the contract before  
6 maturity by giving written notice of cancellation to the permit  
7 holder. The permit holder shall maintain copies of the written  
8 notice of cancellation for three years from the date of receipt.

9 (b) The cancellation of the prepaid funeral benefits  
10 contract does not cancel the insurance policy funding the prepaid  
11 funeral benefits contract. The insurance policy may be canceled in  
12 accordance with the terms of the policy.

13 (c) The cancellation of the prepaid funeral benefits  
14 contract requires the return of trust funds under Section  
15 651.730(e).

16 Sec. 651.720. MODIFICATION AT TIME OF FUNERAL. (a) The  
17 funeral merchandise and services to be provided by the funeral  
18 provider under a prepaid funeral benefits contract may be modified  
19 after the death of the contract beneficiary if the modification  
20 complies with Subsection (b) or is otherwise agreed to in a writing  
21 signed by the funeral provider and the responsible person, except  
22 that:

23 (1) if the purchaser of the prepaid funeral benefits  
24 contract is also the contract beneficiary:

25 (A) the contracted funeral merchandise and  
26 services may not be modified if the contract contains a clause that  
27 prohibits modification; and

1           (B) a modification may not change the type of  
2 disposition specified by the purchaser in the contract, whether by  
3 burial, cremation, or another alternative by which the purchaser's  
4 remains attain their final resting place, as provided by Section  
5 711.002(g), Health and Safety Code; and

6           (2) the value attributed to any funeral merchandise or  
7 service for which the cost is guaranteed in the prepaid funeral  
8 benefits contract that is surrendered or exchanged in a  
9 modification must be computed on a comparable time-price basis with  
10 the price charged for substituted funeral merchandise or service  
11 provided as part of the modification.

12           (b) Except as limited by Subsection (a)(1), the responsible  
13 person may make reasonable modifications to the funeral merchandise  
14 and services provided under a prepaid funeral benefits contract at  
15 the time the funeral is performed, not to exceed 10 percent of the  
16 original purchase price of the contract. This subsection does not  
17 require the permit holder or the funeral provider to:

18           (1) refund a portion of the funds attributable to the  
19 contract if the permit holder or funeral provider grants credit for  
20 surrender or exchange as provided by Subsection (a)(2);

21           (2) provide substituted or additional funeral  
22 merchandise or services in excess of credits granted under  
23 Subsection (a)(2) unless the permit holder or funeral provider  
24 receives additional compensation at current prices; or

25           (3) apply a portion of the funds attributable to the  
26 contract or credits granted under Subsection (a)(2) to another  
27 contract or funeral.

1        (c) The responsible person may not modify a prepaid funeral  
2 benefits contract that has not been fully paid at the time of death  
3 of the contract beneficiary except as agreed to in a writing signed  
4 by the funeral provider and the responsible person.

5        Sec. 651.721. WAIVER OF RIGHT OF CANCELLATION. (a) The  
6 purchaser of a prepaid funeral benefits contract may irrevocably  
7 waive the purchaser's right to cancel the contract under Section  
8 651.719. The waiver must be in a separate writing signed by the  
9 purchaser and the permit holder and may take effect no earlier than  
10 the 15th day after the date of the purchase of the contract. The  
11 form of the waiver must comply with the requirements for the form of  
12 a sales contract under Section 651.718.

13        (b) A waiver made under this section does not affect any  
14 other right of the purchaser.

15        Sec. 651.722. PERFORMANCE OF CONTRACT. Delivery of funeral  
16 merchandise before death is not performance, in whole or in part, of  
17 a prepaid funeral benefits contract.

18        Sec. 651.723. ENFORCEMENT OF CONTRACT. A person that  
19 violates Section 651.707 may not enforce a prepaid funeral benefits  
20 contract, but before performance, the purchaser or an heir or legal  
21 representative of the purchaser is entitled to recover:

22                (1) if trust-funded, the amount paid under the  
23 contract; or

24                (2) if insurance-funded, ownership of the insurance  
25 policy.

26        Sec. 651.724. AGENT OF PERMIT HOLDER. (a) A permit holder  
27 may designate one or more agents to solicit and sell prepaid

1 funeral benefits contracts under a written contract specifying the  
2 duties and obligations of the agents, including the proper receipt  
3 and deposit of any funds or the transmitting of any insurance policy  
4 premiums.

5 (b) The permit holder is responsible for the action or  
6 failure to act of any agent appointed under Subsection (a) in the  
7 course and scope of the agent's duty under the contract with the  
8 permit holder. The appointment of an agent does not diminish any  
9 obligation or responsibility of the permit holder imposed by the  
10 prepaid funeral benefits contract, this subchapter, or other law.

11 Sec. 651.725. TRUST-FUNDED PREPAID FUNERAL BENEFITS AGENT.

12 (a) A permit holder that elects to fund prepaid funeral benefits  
13 contracts with trust funds under Chapter 154, Finance Code, may  
14 sell contracts only through trust-funded prepaid funeral benefits  
15 agents.

16 (b) A permit holder may appoint funeral directors licensed  
17 by the commission as trust-funded prepaid funeral benefits agents.  
18 Licensed funeral directors are not subject to the requirements of  
19 Sections 651.726, 651.727, and 651.728.

20 Sec. 651.726. TRAINING AND EXAMINATION. The permit holder  
21 shall appoint an individual applicant to act as a trust-funded  
22 prepaid funeral benefits agent on its certification that the  
23 applicant has:

24 (1) completed a course of study and instruction in  
25 compliance with this subchapter; and

26 (2) passed without aid a written examination  
27 administered by the permit holder.

1       Sec. 651.727. COURSE. (a) To be eligible to receive an  
2 appointment under Section 651.725, an applicant must complete a  
3 course of study and instruction offered by a permit holder under  
4 this section.

5       (b) The course of study and instruction must:

6           (1) be at least five hours in duration; and

7           (2) include instruction on:

8               (A) funeral merchandise and services, the  
9 responsibilities of a trustee, and the terms of the prepaid funeral  
10 benefits contract; and

11               (B) the laws relating to funeral prearrangement.

12       Sec. 651.728. EXAMINATION. (a) The commission shall  
13 prescribe a uniform examination for applicants that fairly tests  
14 knowledge of the information contained in the course under Section  
15 651.727.

16       (b) The commission shall authorize a permit holder to  
17 administer the examination as provided by this section after  
18 approval by the commission of a complete outline and explanation of  
19 the course and the manner of conducting the examination.

20       Sec. 651.729. INSURANCE-FUNDED PREPAID FUNERAL BENEFITS  
21 CONTRACTS. (a) Except as specified in this section, the  
22 solicitation and sale of insurance policies to fund prepaid funeral  
23 benefits contracts, the terms of policies, all records relating to  
24 transactions, and the conduct of agents and insurers shall be  
25 conducted in accordance with the Insurance Code and regulated  
26 solely by the Texas Department of Insurance.

27       (b) Insurance-funded prepaid funeral benefits contracts may



1 be solicited and sold only by a permit holder, or its agent, who is  
2 properly licensed under Chapter 4054, Insurance Code.

3 (c) The application for an insurance policy covering the  
4 contract beneficiary shall be executed simultaneously with the  
5 prepaid funeral benefits contract.

6 (d) The application must include a disclosure in at least  
7 10-point bold type, immediately above the signature line of the  
8 purchaser, that states:

9 "If you are applying for a life insurance policy with multiple  
10 payments, the total amount of premiums you pay over the life of the  
11 policy may exceed the death benefit."

12 (e) The application must include the name and address of the  
13 insurer in a form required by the Texas Department of Insurance, and  
14 the policy must include a disclosure of the cash surrender value of  
15 the policy payable to the policy owner on cancellation of the  
16 insurance policy.

17 (f) The receipt of funds by the agent constitutes receipt of  
18 premium by the insurer subject to the terms of the policy.

19 (g) The insurance policy must be on a form approved for use  
20 by the Texas Department of Insurance, and the insurance policy must  
21 provide the policy owner the opportunity to cancel the insurance  
22 policy and receive a full refund of any premium paid, for any  
23 reason, for a period of not less than 15 days after the date of  
24 delivery of the insurance policy. After expiration of that period,  
25 cancellation of the insurance policy is subject to the terms of the  
26 policy.

27 (h) The insurer issuing the insurance policy must be

1 licensed to do business in this state.

2 (i) The purchaser of an insurance-funded prepaid funeral  
3 benefits contract may irrevocably assign the purchaser's ownership  
4 of or rights to benefits under the insurance policy to the permit  
5 holder, the funeral provider, or a trustee. An irrevocable  
6 assignment to a trustee is not valid unless it is made solely to  
7 facilitate the eligibility of the purchaser under Title XIX of the  
8 federal Social Security Act (42 U.S.C. Section 1396 et seq.) or  
9 other public assistance program or the trustee is specifically  
10 prohibited from exercising any right under the policy except  
11 administration of the benefits.

12 (j) The insurer shall pay the beneficiary or assignee of an  
13 insurance policy funding a prepaid funeral benefits contract on  
14 receipt of sufficient documentation, which may include:

15 (1) a certification signed by the funeral provider and  
16 the responsible person that the funeral service has been performed  
17 in accordance with the prepaid funeral benefits contract and to the  
18 satisfaction of the responsible person, and a copy of the death  
19 certificate; or

20 (2) other documentation required by the insurer.

21 Sec. 651.730. TRUST-FUNDED PREPAID FUNERAL BENEFITS  
22 CONTRACTS. (a) Except as specified in this section, the terms of  
23 trusts established for prepaid funeral benefits contracts, all  
24 records relating to transactions, and the conduct of agents and  
25 trustees are governed by Chapter 154, Finance Code, and regulated  
26 by the Texas Department of Banking or other regulators with  
27 jurisdiction over the trustee.

1        (b) Trust-funded prepaid funeral benefits contracts may be  
2 solicited and sold only by agents appointed by the permit holder on  
3 forms adopted by the commission by rule.

4        (c) The agent shall provide the purchaser a disclosure in a  
5 form adopted by the commission by rule that includes:

6            (1) the amount retained by the permit holder, funeral  
7 provider, or agent from any funds received from the purchaser  
8 before deposit;

9            (2) the amount retained by the permit holder, funeral  
10 provider, or agent from any funds received from the purchaser on  
11 cancellation;

12           (3) the name, address, and contact person of the  
13 financial institution;

14           (4) a statement that the funds received will be  
15 invested in accordance with the Finance Code but that no return on  
16 funds is guaranteed; and

17           (5) a statement that should the contract beneficiary  
18 die before the prepaid funeral benefits contract is paid in full,  
19 the purchaser, the purchaser's authorized representative, or the  
20 responsible person may elect to pay the balance due and receive the  
21 prepaid funeral benefits under the contract.

22        (d) Funds received for prepaid funeral benefits contracts  
23 shall be administered as prescribed by this section and Chapter  
24 154, Finance Code, as applicable.

25        (e) Not later than the 30th day after the date of the receipt  
26 of a cancellation request, the permit holder shall withdraw and pay  
27 to the purchaser funds in the depository being held for the

1 purchaser's use and benefit.

2 (f) The purchaser or permit holder may not make a partial  
3 cancellation or withdrawal.

4 (g) On cancellation, the purchaser is entitled to receive  
5 the actual amount paid by the purchaser and half of all earnings  
6 attributable to those funds, less the amount permitted to be  
7 retained as provided by Section 154.252, Finance Code, except as  
8 provided by Subsections (h) and (i).

9 (h) A purchaser who cancels a contract on the solicitation  
10 of the permit holder or the funeral provider is entitled to receive  
11 the total amount paid to the permit holder or the funeral provider  
12 by the purchaser and all earnings attributable to those funds. If  
13 the funds are used to purchase a new prepaid funeral benefits  
14 contract under a solicitation by the permit holder, the new  
15 contract must protect the purchaser to an extent equal to or greater  
16 than that provided by the original contract, as determined by the  
17 commission. Under the new contract, the cost to the purchaser of  
18 the same or substantially the same services or merchandise may not  
19 be greater than that provided by the canceled contract.

20 (i) A purchaser who cancels a contract during the first year  
21 of the contract when payments required under the contract are  
22 current is entitled to receive, regardless of the amount held in  
23 trust, the greater of:

24 (1) 90 percent of the actual amount paid by the  
25 purchaser; or

26 (2) the amount deposited in trust with respect to the  
27 purchaser's contract.

1       Sec. 651.731. SEIZURE OF PREPAID FUNERAL TRUST FUNDS AND  
2 RECORDS. (a) After the commission cancels or fails to renew a  
3 permit under Section 651.716(a) or (b) or on notice to a person  
4 required to obtain a permit under this subchapter, the executive  
5 director may issue an order to seize the prepaid funeral trust  
6 funds, including earnings, where those funds are held and may issue  
7 an order to seize the records that relate to the sale of prepaid  
8 funeral benefits if the executive director finds, by examination or  
9 other credible evidence, that the person:

10               (1) failed to deposit or remit funds in accordance  
11 with Chapter 154, Finance Code;

12               (2) misappropriated, converted, or illegally withheld  
13 or failed or refused to pay on demand funds entrusted to the person  
14 that belong to the purchaser or contract beneficiary under a  
15 prepaid funeral benefits contract;

16               (3) refused to submit to examination by the  
17 commission;

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

20               (5) does not hold a permit or transferred the  
21 ownership of its business to another person who does not hold a  
22 permit and who:

23                       (A) did not apply for a new permit before the 31st  
24 day after the date the transfer was completed; or

25                       (B) was denied a new permit.

26       (b) An order shall be served on the person named in the order  
27 by certified mail, return receipt requested, to the last known

1 address of the person.

2 (c) An order takes effect immediately if the executive  
3 director finds that immediate and irreparable harm is threatened to  
4 a contract beneficiary under a prepaid funeral benefits contract.  
5 If such a threat does not exist, the order must state the effective  
6 date, which may not be before the 16th day after the date the order  
7 is mailed.

8 (d) An order takes effect as proposed unless the person  
9 named in the order requests a hearing not later than the 15th day  
10 after the date the order is mailed.

11 (e) Premiums received on the disposition of a contract  
12 related to the seizure of prepaid funeral trust funds shall be  
13 handled as provided by Section 651.732 and Subchapter H, Chapter  
14 154, Finance Code.

15 Sec. 651.732. NOTIFICATION TO PURCHASER. Not later than  
16 the 30th day after the date prepaid funeral trust funds are seized  
17 under Section 651.731, the executive director shall notify each  
18 known person who purchased prepaid funeral benefits under a  
19 contract from the permit holder whose permit is canceled. The  
20 notice must:

21 (1) include an explanation of the procedures under  
22 this subchapter for canceling the contract and claiming funds that  
23 may be due the person if the person elects to cancel;

24 (2) inform the person to continue to make payments  
25 under the contract if the person elects to keep the contract in  
26 force; and

27 (3) inform the person that if the person elects to keep

1 the contract in force the executive director will transfer:

2 (A) responsibility to perform the contract to a  
3 responsible successor permit holder selected by the executive  
4 director; or

5 (B) the seized funds to the fund maintained under  
6 Section 154.351, Finance Code, subject to the claims process  
7 prescribed by rule under Subchapter H, Chapter 154, Finance Code.

8 Sec. 651.733. LIQUIDATION OF BUSINESS AND AFFAIRS OF PERSON  
9 FOLLOWING SEIZURE OF TRUST FUNDS AND RECORDS. After an order issued  
10 under Section 651.731(a) becomes final and unappealable, the  
11 executive director may petition the district court in the county in  
12 which a person required to hold a permit under this subchapter  
13 resides to request the issuance of an order to show cause why the  
14 business and affairs of that person should not be liquidated and a  
15 receiver appointed by the court for that purpose if the person  
16 failed or refused to correct the violation before the 31st day after  
17 the date the person received written notice from the executive  
18 director.

19 Sec. 651.734. PENALTIES FOR VIOLATIONS OF SUBCHAPTER. (a)  
20 A person commits an offense if the person:

21 (1) fails to deposit funds in compliance with this  
22 subchapter unless the failure to make a deposit is inadvertent and  
23 is corrected before the 11th day after the date the permit holder  
24 discovers the failure; or

25 (2) withdraws funds in a manner inconsistent with this  
26 subchapter unless the withdrawal was made in error and the  
27 withdrawal is reversed before the 11th day after the date the permit

1 holder discovers the error.

2 (b) An offense under this section is punishable as if it  
3 were an offense under Section 32.45, Penal Code.

4 Sec. 651.735. ADMINISTRATIVE PENALTY. (a) After notice  
5 and opportunity for hearing, the executive director may impose an  
6 administrative penalty on a person who:

7 (1) violates this subchapter or a final order of the  
8 commission or rule of the commission and does not correct the  
9 violation before the 31st day after the date the person receives  
10 written notice of the violation from the commission; or

11 (2) engages in a pattern of violations, as determined  
12 by the executive director.

13 (b) The amount of the penalty for each violation may not  
14 exceed \$1,000 for each day the violation occurs.

15 (c) In determining the amount of the penalty, the executive  
16 director shall consider the seriousness of the violation, the  
17 person's history of violations, and the person's good faith in  
18 attempting to comply with this subchapter.

19 (d) The imposition of a penalty under this section is:

20 (1) subject to the procedures of Subchapter L; and

21 (2) subject to judicial review as a contested case  
22 under Chapter 2001, Government Code.

23 Sec. 651.736. RESTITUTION. The commission may issue an  
24 order to a person requiring restitution if, after notice and  
25 opportunity for hearing, the commission finds that the person:

26 (1) failed to deposit funds in accordance with  
27 Subchapter F, Chapter 154, Finance Code; or



1           (2) misappropriated, converted, or illegally withheld  
2 or failed or refused to pay on demand funds entrusted to the person  
3 that belong to the contract beneficiary under a prepaid funeral  
4 benefits contract.

5           Sec. 651.737. DELIVERY AT NEED. (a) A funeral provider  
6 responsible for the delivery of prepaid funeral benefits shall  
7 provide the responsible person, at the time of delivery of prepaid  
8 funeral benefits, with a written reconciliation on a form adopted  
9 by the commission by rule.

10           (b) The reconciliation must provide complete, item-by-item  
11 details of the provider's resolution of the funeral costs with the  
12 responsible person, including prices and any guarantees, guarantee  
13 limitations, nonguaranteed items, and balance due.

14           (c) The funeral provider shall maintain a fully executed  
15 copy of each reconciliation until the next examination by the  
16 commission under Section 651.704.

17           SECTION 2. Section 154.002(10), Finance Code, is amended to  
18 read as follows:

19           (10) "Seller" means a person holding a permit to sell  
20 ~~[selling, accepting money or premiums for, or soliciting contracts~~  
21 ~~for]~~ prepaid funeral benefits ~~[or]~~ contracts under Subchapter O,  
22 Chapter 651, Occupations Code, and electing [or insurance policies]  
23 to fund those contracts through a trust [prepaid funeral benefits  
24 ~~in this state].~~

25           SECTION 3. The following laws are repealed:

26           (1) Section 154.002(7), Finance Code;

27           (2) Subchapters B, C, D, and I, Chapter 154, Finance

1 Code;

2 (3) Section 154.201, Finance Code;

3 (4) Section 154.202, Finance Code;

4 (5) Section 154.203, Finance Code;

5 (6) Section 154.205, Finance Code;

6 (7) Section 154.206, Finance Code;

7 (8) Section 154.207, Finance Code; and

8 (9) Sections 651.159 and 651.160, Occupations Code.

9 SECTION 4. A person holding a permit issued by the Texas  
10 Department of Banking to sell prepaid funeral benefits on the  
11 effective date of this Act shall be issued a permit by the Texas  
12 Funeral Service Commission without application, effective  
13 September 1, 2009. All provisions of this Act apply to the permit  
14 holder on and after the effective date of this Act, except that the  
15 permit holder has until the third anniversary of the effective date  
16 of this Act to meet the financial responsibility requirements of  
17 Section 651.709(c), Occupations Code, as added by this Act.

18 SECTION 5. This Act takes effect September 1, 2009.