

1-1 By: Flynn (Senate Sponsor - Deuell) H.B. No. 3762
1-2 (In the Senate - Received from the House May 1, 2009;
1-3 May 4, 2009, read first time and referred to Committee on Business
1-4 and Commerce; May 19, 2009, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;
1-6 May 19, 2009, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 3762 By: Jackson

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to regulation of prepaid funeral benefits.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 154.002, Finance Code, is amended by
1-13 amending Subdivisions (1) and (6) and adding Subdivisions (1-a),
1-14 (6-a), and (14) to read as follows:

1-15 (1) "Cash advance item" has the meaning assigned by 16
1-16 C.F.R. Section 453.1.

1-17 (1-a) "Commission" means the Finance Commission of
1-18 Texas.

1-19 (6) "Funeral provider" means the person [funeral home]
1-20 designated in a prepaid funeral benefits contract that has agreed
1-21 to provide the specified prepaid funeral benefits.

1-22 (6-a) "Insurance-funded contract" means an
1-23 insurance-funded prepaid funeral benefits contract.

1-24 (14) "Trust-funded contract" means a trust-funded
1-25 prepaid funeral benefits contract.

1-26 SECTION 2. Section 154.052(a), Finance Code, is amended to
1-27 read as follows:

1-28 (a) The department may require a permit holder that has
1-29 outstanding contracts for prepaid funeral benefits to submit an
1-30 annual report in the form required by rule of the commission [the
1-31 department].

1-32 SECTION 3. Section 154.053, Finance Code, is amended to
1-33 read as follows:

1-34 Sec. 154.053. RECORDS; EXAMINATION. (a) A permit holder
1-35 [seller] that has outstanding contracts for prepaid funeral
1-36 benefits shall maintain records as [in this state any record]
1-37 required by rule of the commission.

1-38 (b) The [the] department shall examine the records of each
1-39 permit holder at least once every 18-month period, except that the
1-40 department may examine a permit holder more frequently if:

1-41 (1) the permit holder:

1-42 (A) has received a uniform risk rating, under
1-43 standards adopted by rule of the commission, that is less than
1-44 satisfactory as a result of the permit holder's most recent
1-45 examination; or

1-46 (B) is subject to a formal enforcement proceeding
1-47 or order by the commissioner; or

1-48 (2) the commissioner determines in the exercise of
1-49 discretion that additional examination is necessary to safeguard
1-50 the interests of purchasers and beneficiaries and to efficiently
1-51 enforce applicable law.

1-52 (c) The department may defer an examination under this
1-53 section for not more than six months if the commissioner determines
1-54 that deferment of the examination is necessary for the efficient
1-55 enforcement of applicable law.

1-56 (d) Any record may be maintained and provided for
1-57 examination in electronic format if the record is reliable and can
1-58 be retrieved in a timely manner.

1-59 (e) The department, in consultation with the advisory
1-60 committee established under Section 154.208, shall develop an
1-61 examination manual that includes procedures intended to reduce the
1-62 expense of examinations under this section to the department and
1-63 the permit holders [to determine whether the seller is complying

with this chapter. The record is subject to annual examination by the department or its agent and to additional examinations the department considers necessary.

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

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

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

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

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

(A) a funeral provider;

(B) an insurance company; or

(C) the insurance holding company for an insurance company if the insurance company does not have the authority under its domiciliary law to directly hold a permit issued under this chapter;

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

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

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

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

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

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

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

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

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

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

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

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

SUBCHAPTER C-1. PRESALE DISCLOSURES

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

funeral benefits contract.

(b) The brochure must:

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

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

(c) The department:

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

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

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

(b) The website:

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

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

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

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

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

(c) If a [A] funeral provider designated in the contract to provide prepaid funeral benefits is [that are] not the seller licensed under this chapter, [sold by] the funeral provider must:

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

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

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

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

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

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

(b) Cash advance items included in a prepaid funeral benefits contract must be clearly grouped together and segregated from prepaid funeral benefits in a manner that will permit the average consumer to easily understand that:

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

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

(c) A seller shall administer purchaser funds received in

advance for cash advance items under a prepaid funeral benefits contract in the manner required by Section 154.159 or 154.203.

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

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

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

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

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

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

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

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

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

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

(1) ~~[(A)]~~ the contracted funeral merchandise and 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 unpaid cost of contracted or additional cash advance items; and

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

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

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

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

(b) The seller shall notify the department of:

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

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

SECTION 14. Subchapter D, Chapter 154, Finance Code, is amended by adding Section 154.161 to read as follows:

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

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

(2) after the death of the contract beneficiary:
(A) deliver the contracted funeral merchandise and services and cash advance items required under the contract, subject to Section 154.1551;

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

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

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

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

(A) sign the reconciliations required by Subdivision (2);

(B) promptly deliver the records that verify contract performance to the seller, including the final at-need contract, the certificate of performance, and the reconciliations required under Subdivision (2);

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

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

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

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

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

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

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

(3) the department finds that:

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

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

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

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

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

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

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

~~[(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

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

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

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

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

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

Sec. 154.205. ~~[AMOUNT PAYABLE ON]~~ CANCELLATION OF INSURANCE-FUNDED CONTRACT. (a) A purchaser of an insurance-funded prepaid funeral benefits contract may cancel the contract before maturity by giving written notice of cancellation to the permit holder. The permit holder shall maintain copies of the written notice of cancellation until the third anniversary of the date of receipt of notice ~~[who cancels the contract during the first year of the contract when payments required under the contract are current is entitled to receive the cash surrender value of the policy].~~

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

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

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

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

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

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

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

SECTION 20. Section 154.207, Finance Code, is amended to read as follows:

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

(1) the beneficiary named in the contract dies;

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

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

(4) the insurance company is presented with:

(A) certification from the funeral provider

attesting to matters required by Subdivisions (2) and (3) ~~[appropriate affidavits by an officer or designated agent of the seller on forms prescribed by the department]; and~~

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

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

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

Sec. 154.208. ADVISORY COMMITTEE. (a) The commissioner shall appoint an advisory committee to review and make recommendations regarding the technical procedures and processes employed by the department to regulate insurance-funded prepaid funeral benefits and monitor compliance of sellers of insurance-funded contracts under this chapter, including recommendations relating to:

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

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

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

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

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

(1) two representatives of the department;

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

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

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

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

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

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

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

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

(1) the beneficiary named in the contract dies;

(2) the funeral service is completed; ~~and~~

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

9-1 and

9-2 (4) the depository is presented with:

9-3 (A) appropriate affidavits by an officer or agent
9-4 of the seller on forms prescribed by the department, attesting to
9-5 matters required by Subdivisions (2) and (3); and

9-6 (B) a certified copy of the death certificate.

9-7 SECTION 23. Section 154.351, Finance Code, is amended to
9-8 read as follows:

9-9 Sec. 154.351. MAINTENANCE OF GUARANTY FUND. (a) The
9-10 commission by rule shall establish and the department shall
9-11 maintain a fund to guarantee performance by sellers of prepaid
9-12 funeral benefits contracts of their obligations to the purchasers
9-13 [under the provisions of this chapter governing prepaid funeral
9-14 trusts].

9-15 (b) Except as provided by Subsection (c), for purposes of
9-16 claims and assessments, the department shall maintain separate
9-17 accounts within the fund for trust-funded contracts and
9-18 insurance-funded contracts.

9-19 (c) The advisory council under Section 154.355 may
9-20 authorize borrowing between accounts to facilitate prompt and
9-21 efficient resolution of claims against an account with an
9-22 insufficient balance if:

9-23 (1) the indebted account is obligated to pay interest
9-24 at a rate that will reasonably compensate the lending account for
9-25 lost earnings;

9-26 (2) required or planned assessments for the benefit of
9-27 the indebted account are pending and sufficient to repay the
9-28 lending account; and

9-29 (3) assessments collected for the benefit of the
9-30 indebted account are transferred to the lending account until the
9-31 borrowed amount plus interest has been repaid.

9-32 SECTION 24. Subchapter H, Chapter 154, Finance Code, is
9-33 amended by adding Section 154.3525 to read as follows:

9-34 Sec. 154.3525. ASSESSMENT ON INSURANCE-FUNDED CONTRACTS.
9-35 (a) The department shall assess and collect from a seller not more
9-36 than \$1 for each insurance-funded contract sold during each
9-37 calendar year and shall deposit the assessments in the
9-38 insurance-funded contract account within the fund.

9-39 (b) The department shall stop assessing the amounts
9-40 required by Subsection (a) when the amount in the insurance-funded
9-41 contract account reaches \$1 million.

9-42 SECTION 25. Section 154.355, Finance Code, is amended to
9-43 read as follows:

9-44 Sec. 154.355. ADVISORY COUNCIL. (a) An advisory council
9-45 composed of the following individuals shall supervise the operation
9-46 and maintenance of the fund:

9-47 (1) the commissioner or the commissioner's
9-48 representative;

9-49 (2) the attorney general or the attorney general's
9-50 representative;

9-51 (3) two representatives [one representative] of the
9-52 prepaid funeral industry appointed by the commission, one of whom
9-53 represents trust-funded prepaid funeral benefits contract sellers
9-54 and one of whom represents insurance-funded prepaid funeral
9-55 benefits contract sellers [Finance Commission of Texas]; and

9-56 (4) one consumer representative appointed by the
9-57 commission [Finance Commission of Texas].

9-58 (b) The prepaid funeral industry and consumer
9-59 representatives serve two-year terms and may not serve more than
9-60 four [two] terms.

9-61 (c) The commissioner shall render a final decision [cast the
9-62 deciding vote] if there is a tie vote by members of the advisory
9-63 council.

9-64 SECTION 26. Subchapter H, Chapter 154, Finance Code, is
9-65 amended by adding Section 154.3551 to read as follows:

9-66 Sec. 154.3551. LIMIT ON LIABILITY. (a) A member of the
9-67 advisory council is not personally liable for damages arising from
9-68 the member's official act or omission under this subchapter unless
9-69 the act or omission is corrupt or malicious.

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

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

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

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

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

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

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

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

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

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

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

Sec. 154.3565. ASSESSMENT ON OUTSTANDING INSURANCE-FUNDED CONTRACTS TO PAY CLAIMS. (a) To pay a claim against the fund when the balance of the insurance-funded contract account is insufficient to pay that claim, the advisory council may assess each permit holder that has outstanding insurance-funded contracts an amount based on the permit holder's proportionate share of all outstanding insurance-funded contracts determined as of the end of the preceding calendar year.

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

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

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

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

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

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

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

(2) a purchaser's estate;

(3) a permit holder or funeral provider who assumes or performs a contract; or

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

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

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

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

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

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

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

(5) expenses to employ and compensate a consultant, an agent, legal counsel, an accountant, and any other person appropriate and consistent with the purpose of the fund, as determined by the advisory council.

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

(1) a claim based on marketing materials;

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

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

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

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

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

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

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

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

(b) The order must state:

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

12-1 (2) the effective date of ~~[, which may not be before~~
 12-2 ~~the 16th day after the date]~~ the order ~~[is mailed]~~.

12-3 (d) Except as provided by Section 154.4081, the ~~[The]~~ order
 12-4 takes effect as proposed, except that the order may not take effect
 12-5 before the 16th day after the date the order is mailed unless the
 12-6 person named in the order requests a hearing not later than the 15th
 12-7 day after the date the order is mailed.

12-8 SECTION 31. Subchapter I, Chapter 154, Finance Code, is
 12-9 amended by adding Section 154.4081 to read as follows:

12-10 Sec. 154.4081. EMERGENCY ORDER. (a) The commissioner may
 12-11 issue an emergency order that takes effect immediately if the
 12-12 commissioner finds that immediate and irreparable harm is
 12-13 threatened to the public or a beneficiary under a prepaid funeral
 12-14 benefits contract.

12-15 (b) An emergency order remains in effect unless stayed by
 12-16 the commissioner.

12-17 (c) The person named in the order may request in writing an
 12-18 opportunity for a hearing to show that the emergency order should be
 12-19 stayed. On receipt of the request, the commissioner shall set a
 12-20 time for the hearing before the 22nd day after the date the
 12-21 commissioner received the request, unless extended at the request
 12-22 of the person named in the order.

12-23 (d) The hearing is an administrative hearing relating to the
 12-24 validity of findings that support immediate effect of the order.

12-25 SECTION 32. The heading to Section 154.412, Finance Code,
 12-26 is amended to read as follows:

12-27 Sec. 154.412. SEIZURE OF PREPAID FUNERAL ACCOUNTS ~~[MONEY]~~
 12-28 AND RECORDS.

12-29 SECTION 33. Section 154.412, Finance Code, is amended by
 12-30 amending Subsections (a), (c), and (d) and adding Subsections
 12-31 (c-1), (f), and (g) to read as follows:

12-32 (a) ~~The [After the commissioner cancels or fails to renew a~~
 12-33 ~~permit under Section 154.109(a) or on notice to a person required to~~
 12-34 ~~obtain a permit under this chapter, the]~~ commissioner may issue an
 12-35 order to seize accounts in which [the] prepaid funeral funds
 12-36 [money], including earnings, may be [where that money is] held and
 12-37 may issue an order to seize the records that relate to the sale of
 12-38 prepaid funeral benefits if the commissioner finds, by examination
 12-39 or other credible evidence, that the person:

12-40 (1) failed to deposit or remit money in accordance
 12-41 with Subchapter E or F;

12-42 (2) misappropriated, converted, or illegally withheld
 12-43 or failed or refused to pay on demand money entrusted to the person
 12-44 that belongs to the beneficiary under a prepaid funeral benefits
 12-45 contract;

12-46 (3) refused to submit to examination by the
 12-47 department;

12-48 (4) was the subject of an order to cancel, suspend, or
 12-49 refuse to renew a permit; or

12-50 (5) does not hold a permit or transferred the
 12-51 ownership of its business to another person who does not hold a
 12-52 permit ~~[and who-~~

12-53 ~~[(A) did not apply for a new permit before the~~
 12-54 ~~31st day after the date the transfer was completed, or~~

12-55 ~~[(B) was denied a new permit].~~

12-56 (c) An order takes effect immediately, and remains in effect
 12-57 unless stayed by the commissioner, if the commissioner finds that
 12-58 immediate and irreparable harm is threatened to the public or a
 12-59 beneficiary under a prepaid funeral benefits contract. If such a
 12-60 threat does not exist, the order must state the effective date,
 12-61 which may not be before the 16th day after the date the order is
 12-62 mailed.

12-63 (c-1) An emergency order remains in effect unless stayed by
 12-64 the commissioner. The person named in the order may request in
 12-65 writing an opportunity for a hearing to show that the emergency
 12-66 order should be stayed. On receipt of the request, the commissioner
 12-67 shall set a time before the 22nd day after the date the commissioner
 12-68 received the request, unless extended at the request of the person
 12-69 named in the order. The hearing is an administrative hearing

relating to the findings that support immediate effect of the order.

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

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

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

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

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

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

(a) This chapter does not apply to ~~[a rider or endorsement that]~~:

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

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

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

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

(2) the modification of a previously approved insurance policy form for the sole purpose of adding the statement required by Section 154.2021(a)(3), Finance Code.

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

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

(b) Section 154.102, Finance Code, as amended by this Act, does not apply to the renewal of a permit originally issued before September 1, 2009, if the permit is timely and continuously renewed after that date and is not suspended, canceled, or nonrenewed for reasons other than the requirements of Section 154.102, Finance Code. An application for renewal that meets the conditions of this subsection is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

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

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

SECTION 37. (a) Subchapter H, Chapter 154, Finance Code, as amended by this Act, does not apply to a loss under an insurance-funded prepaid funeral benefits contract that arises

from or relates to the occurrence of one of the following events before September 1, 2009:

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

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

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

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

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

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

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

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

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

* * * * *