

By: Flynn

H.B. No. 3801

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 154.102, 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:

1 (A) a funeral provider;
2 (B) an insurance company; or
3 (C) the insurance holding company for an
4 insurance company if the insurance company does not have the
5 authority under its domiciliary law to directly hold a permit
6 issued under this chapter;

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

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

12 (4) [~~2~~] pay a filing fee in an amount set by the
13 commission under Section 154.051; and

14 (5) [~~3~~] if applicable, pay extraordinary expenses
15 required for out-of-state investigation of the person.

16 SECTION 3. Sections 154.106(a) and (b), Finance Code, are
17 amended to read as follows:

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

24 (b) If the proposed transferee [~~transfer is to a person who~~]
25 is not a permit holder, the proposed transferee [~~person~~] shall file
26 an application for a permit with the department in accordance with
27 this subchapter. If the application is complete, the commissioner

1 shall approve or deny the application before the 16th [~~not later~~
2 ~~than the 30th~~] day after the date the application was received. The
3 transfer of prepaid funeral benefits contracts of the permit holder
4 that is the transferor may not occur until after the date a permit
5 is issued to the applicant that is the transferee [~~transfer is~~
6 ~~completed~~].

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

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

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

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

18 SECTION 5. Chapter 154, Finance Code, is amended by adding
19 Subchapter C-1 to read as follows:

20 SUBCHAPTER C-1. PRESALE DISCLOSURES

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

25 (b) The brochure must:

26 (1) describe the regulation of prepaid funeral
27 benefits contracts and the trust and insurance funding options

1 available under the law of this state; and

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

4 (c) The department:

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

7 (2) may provide a model informational brochure that
8 complies with this section.

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

13 (b) The website:

14 (1) must include a description of the trust and
15 insurance funding options available under the law of this state;

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

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

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

26 SECTION 6. Sections 154.151(c) and (e), Finance Code, are
27 amended to read as follows:

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

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

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

7 (3) acknowledge and agree to discharge the
8 responsibilities imposed on a funeral provider by Section 154.161,
9 either in the prepaid funeral benefits contract or in a separate
10 writing signed by the funeral provider and the seller.

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

19 SECTION 7. Subchapter D, Chapter 154, Finance Code, is
20 amended by adding Section 154.1511 to read as follows:

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

1 funeral.

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

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

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

10 (c) A seller shall administer purchaser funds received in
11 advance for cash advance items under a prepaid funeral benefits
12 contract in the manner required by Section 154.159.

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

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

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

1 SECTION 8. Section 154.155(d), Finance Code, is amended to
2 read as follows:

3 (d) The purchaser is entitled to receive the actual amount
4 paid by the purchaser and half of all earnings attributable to that
5 money, less the amount permitted to be retained as provided by
6 Section 154.252, except as provided by Subsection (e) and by
7 Sections 154.1511, 154.1551, 154.205, and 154.254.

8 SECTION 9. Section 154.1551, Finance Code, is amended by
9 amending Subsection (a) and adding Subsections (d), (e), and (f) to
10 read as follows:

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

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

21 (1) [~~(A)~~] the contracted funeral merchandise and
22 services may not be modified if the contract contains a clause that
23 prohibits modification; and

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

1 711.002(g), Health and Safety Code~~[, and~~

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

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

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

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

20 (1) the value attributed to any contracted funeral
21 merchandise or service that is surrendered in a modification,
22 determined as provided under Subsection (d), may be applied to the
23 unpaid cost of contracted or additional cash advance items; and

24 (2) the funeral provider promptly refunds the
25 proportionate part of the trust or insurance policy proceeds
26 received under the contract that is derived from advance payment of
27 a surrendered or canceled cash advance item to the extent the

1 proceeds are not applied to the unpaid cost of additional cash
2 advance items or additional funeral merchandise or services
3 requested by the person charged with disposition of the
4 beneficiary's remains.

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

7 (a) The purchaser of a prepaid funeral benefits contract may
8 irrevocably waive the purchaser's right to cancel the contract
9 under Section 154.155. The waiver must be in a separate writing
10 signed by the purchaser and the seller and ~~[not earlier than the~~
11 ~~15th day after the date of the purchase of the contract. The form of~~
12 ~~the waiver]~~ must comply with the plain language requirements for
13 the form of a sales contract under Section 154.151.

14 SECTION 11. Section 154.160(b), Finance Code, is amended to
15 read as follows:

16 (b) The seller shall notify the department of:
17 (1) the designation not later than the 10th day after
18 the date the seller becomes subject to this chapter; and
19 (2) any change in the designation not later than the
20 10th day after ~~[within the 10-day period preceding]~~ the date of the
21 change.

22 SECTION 12. Subchapter D, Chapter 154, Finance Code, is
23 amended by adding Section 154.161 to read as follows:

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

27 (1) in compliance with applicable law, protect any

1 nonpublic personal financial and health information of the
2 purchaser and contract beneficiary in the possession of the funeral
3 provider;

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

5 (A) deliver the contracted funeral merchandise
6 and services and cash advance items required under the contract,
7 subject to Section 154.1551;

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

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

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

18 (A) sign the reconciliations required by
19 Subsection (a)(2);

20 (B) promptly deliver the records that verify
21 contract performance to the seller, including the final at-need
22 contract, the certificate of performance, and the reconciliations
23 required under Subsection (a)(2);

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

27 (D) provide copies of any other records or

1 documentation related to the offer, sale, and performance of the
2 contract that are reasonably requested by the seller or the
3 department, including records related to any refund required by
4 Section 154.1511 or 154.1551.

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

9 SECTION 13. Subchapter E, Chapter 154, Finance Code, is
10 amended by adding Section 154.2021 to read as follows:

11 Sec. 154.2021. REQUIREMENTS FOR INSURANCE POLICIES. (a) An
12 insurance policy used to fund prepaid funeral benefits under this
13 chapter must contain the following statement on the cover page or
14 otherwise within the policy or a rider to the policy: "This policy
15 is issued to fund a prepaid funeral benefits contract subject to
16 Chapter 154 of the Texas Finance Code. Cancellation of the prepaid
17 funeral benefits contract does not automatically cancel this
18 policy."

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

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

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

1 SECTION 14. Section 154.205, Finance Code, is amended to
2 read as follows:

3 Sec. 154.205. AMOUNT PAYABLE ON CANCELLATION OF CONTRACT.
4 A purchaser of an insurance-funded prepaid funeral benefits
5 contract who cancels the contract [~~during the first year of the~~
6 ~~contract when payments required under the contract are current~~] is
7 entitled to receive the cash surrender value of the insurance
8 policy if the policy is also canceled. Cancellation of the contract
9 does not automatically cancel the funding insurance policy.

10 SECTION 15. Section 154.206, Finance Code, is amended to
11 read as follows:

12 Sec. 154.206. ASSIGNMENT OF RIGHT TO BENEFITS. The
13 purchaser of an insurance-funded prepaid funeral benefits contract
14 may irrevocably assign the purchaser's ownership of and rights to
15 benefits under the insurance policy to the seller, the funeral
16 provider, the trustee, or other person. An assignee under this
17 section is subject to a fiduciary duty to apply the insurance policy
18 benefits as provided by the contract and this chapter.

19 SECTION 16. Section 154.207(a), Finance Code, is amended to
20 read as follows:

21 (a) The seller or funeral provider may withdraw the benefits
22 payable under an insurance policy funding prepaid funeral benefits
23 after:

- 24 (1) the beneficiary named in the contract dies;
25 (2) the funeral service is completed; [~~and~~]
26 (3) the funeral provider has completed the provider's
27 obligations under Section 154.161(a) with respect to the contract;

1 and

2 (4) the insurance company is presented with:

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

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

8 SECTION 17. Section 154.262(a), Finance Code, is amended to
9 read as follows:

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

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

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

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

19 (4) the depository is presented with:

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

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

24 SECTION 18. Section 154.351, Finance Code, is amended to
25 read as follows:

26 Sec. 154.351. MAINTENANCE OF GUARANTY FUND. (a) The
27 commission by rule shall establish and the department shall

1 maintain a fund to guarantee performance by sellers of prepaid
2 funeral benefits contracts of their obligations to the purchasers
3 [~~under the provisions of this chapter governing prepaid funeral~~
4 ~~trusts~~].

5 (b) Except as provided by Subsection (c), for purposes of
6 claims and assessments, the department shall maintain separate
7 accounts within the fund for trust-funded contracts and
8 insurance-funded contracts.

9 (c) The advisory council under Section 154.355 may
10 authorize borrowing between accounts to facilitate prompt and
11 efficient resolution of claims against an account with an
12 insufficient balance if:

13 (1) the indebted account is obligated to pay interest
14 at a rate that will reasonably compensate the lending account for
15 lost earnings;

16 (2) required or planned assessments for the benefit of
17 the indebted account are pending and sufficient to repay the
18 lending account; and

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

22 SECTION 19. Subchapter H, Chapter 154, Finance Code, is
23 amended by adding Section 154.3525 to read as follows:

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

25 (a) The department shall assess and collect from a seller not more
26 than \$1 for each insurance-funded contract sold during each
27 calendar year and shall deposit the assessments in the

1 insurance-funded contract account within the fund.

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

5 SECTION 20. Section 154.355, Finance Code, is amended to
6 read as follows:

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

10 (1) the commissioner or the commissioner's
11 representative;

12 (2) the attorney general or the attorney general's
13 representative;

14 (3) two representatives [~~one representative~~] of the
15 prepaid funeral industry appointed by the commission, one of whom
16 represents trust-funded prepaid funeral benefits contract sellers
17 and one of whom represents insurance-funded prepaid funeral
18 benefits contract sellers [~~Finance Commission of Texas~~]; and

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

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

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

27 SECTION 21. Subchapter H, Chapter 154, Finance Code, is

1 amended by adding Section 154.3551 to read as follows:

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

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

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

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

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

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

21 SECTION 22. Section 154.356, Finance Code, is amended to
22 read as follows:

23 Sec. 154.356. ASSESSMENT ON OUTSTANDING TRUST-FUNDED
24 CONTRACTS TO PAY CLAIMS. (a) To pay a claim against the fund when
25 the balance of the trust-funded contract account [~~fund~~] is
26 insufficient to pay that claim, the advisory council may assess
27 each [~~person that holds a~~] permit holder that has outstanding

1 trust-funded contracts an amount [~~under this chapter~~] based on the
2 permit holder's proportionate share of the purchasers' deposits on
3 all outstanding trust-funded [~~prepaid funeral benefits~~] contracts
4 determined as of the end of the preceding calendar year.

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

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

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

13 SECTION 23. Subchapter H, Chapter 154, Finance Code, is
14 amended by adding Section 154.3565 to read as follows:

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

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

27 (c) An assessment made under this section is in addition to

1 any assessment required by Section 154.3525.

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

5 SECTION 24. Subchapter H, Chapter 154, Finance Code, is
6 amended by adding Sections 154.358, 154.359, and 154.360 to read as
7 follows:

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

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

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

15 (2) a purchaser's estate;

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

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

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

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

1 (1) a loss attributable to the failure or inability of
2 a permit holder to provide the prepaid funeral benefits under a
3 prepaid contract or to refund the appropriate amount due because of
4 a contract cancellation;

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

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

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

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

21 (b) The fund is not authorized to pay any claimant an amount
22 that exceeds the contractual obligations specified by the express
23 written terms of the prepaid funeral benefits contract, including:

24 (1) a claim based on marketing materials;

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

27 (3) a claim based on misrepresentation of the benefits

1 conferred by the contract or a funding insurance policy; or

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

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

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

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

23 (c) The commissioner, on behalf of the fund, may bring an
24 action against any person and may employ and compensate a
25 consultant, an agent, legal counsel, an accountant, or any other
26 person the commissioner considers appropriate to collect a
27 subrogated amount. Payment shall be made from the appropriate

1 account within the fund for these services. Any recovery of a
2 subrogated amount shall be deposited in the appropriate account
3 within the fund.

4 SECTION 25. Sections 154.408(b) and (d), Finance Code, are
5 amended to read as follows:

6 (b) The order must state:

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

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

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

16 SECTION 26. Subchapter I, Chapter 154, Finance Code, is
17 amended by adding Section 154.4081 to read as follows:

18 Sec. 154.4081. EMERGENCY ORDER. (a) The commissioner may
19 issue an emergency order that takes effect immediately if the
20 commissioner finds that immediate and irreparable harm is
21 threatened to the public or a beneficiary under a prepaid funeral
22 benefits contract.

23 (b) An emergency order remains in effect unless stayed by
24 the commissioner.

25 (c) The person named in the order may request in writing an
26 opportunity for a hearing to show that the emergency order should be
27 stayed. On receipt of the request, the commissioner shall set a

1 time for the hearing before the 22nd day after the date the
2 commissioner received the request, unless extended at the request
3 of the person named in the order.

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

6 SECTION 27. The heading to Section 154.412, Finance Code,
7 is amended to read as follows:

8 Sec. 154.412. SEIZURE OF PREPAID FUNERAL ACCOUNTS [~~MONEY~~]
9 AND RECORDS.

10 SECTION 28. Section 154.412, Finance Code, is amended by
11 amending Subsections (a), (c), and (d) and adding Subsections
12 (c-1), (f), and (g) to read as follows:

13 (a) The [~~After the commissioner cancels or fails to renew a~~
14 ~~permit under Section 154.109(a) or on notice to a person required to~~
15 ~~obtain a permit under this chapter, the~~] commissioner may issue an
16 order to seize accounts in which [~~the~~] prepaid funeral funds
17 [~~money~~], including earnings, may be [~~where that money is~~] held and
18 may issue an order to seize the records that relate to the sale of
19 prepaid funeral benefits if the commissioner finds, by examination
20 or other credible evidence, that the person:

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

23 (2) misappropriated, converted, or illegally withheld
24 or failed or refused to pay on demand money entrusted to the person
25 that belongs to the beneficiary under a prepaid funeral benefits
26 contract;

27 (3) refused to submit to examination by the

1 department;

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

4 (5) does not hold a permit or transferred the
5 ownership of its business to another person who does not hold a
6 permit ~~[and who:~~

7 ~~[(A) did not apply for a new permit before the~~
8 ~~31st day after the date the transfer was completed; or~~

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

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

17 (c-1) An emergency order remains in effect unless stayed by
18 the commissioner. The person named in the order may request in
19 writing an opportunity for a hearing to show that the emergency
20 order should be stayed. On receipt of the request, the commissioner
21 shall set a time before the 22nd day after the date the commissioner
22 received the request, unless extended at the request of the person
23 named in the order. The hearing is an administrative hearing
24 relating to the findings that support immediate effect of the
25 order.

26 (d) A nonemergency ~~[An]~~ order takes effect as proposed
27 unless the person named in the order requests a hearing not later

1 than the 15th day after the date the order is mailed.

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

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

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

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

14 SECTION 29. Section 1701.005(a), Insurance Code, is amended
15 to read as follows:

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

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

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

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

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

26 (2) the modification of a previously approved
27 insurance policy form for the sole purpose of adding the statement

1 required by Section 154.2021(a).

2 SECTION 30. (a) Section 154.102, Finance Code, as amended
3 by this Act, applies only to an application for a new permit filed
4 on or after September 1, 2009. An application for a new permit that
5 was filed in good faith before the effective date of this Act is
6 governed by the law as it existed immediately before the effective
7 date of this Act, and that law is continued in effect for that
8 purpose.

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

18 (c) Section 154.151, Finance Code, as amended by this Act,
19 and Section 154.2021(b), Finance Code, as added by this Act, apply
20 only to a prepaid funeral benefits contract entered into on or after
21 September 1, 2009. A prepaid funeral benefits contract entered
22 into before September 1, 2009, is governed by the law as it existed
23 immediately before the effective date of this Act, and that law is
24 continued in effect for that purpose.

25 (d) Section 154.2021(a), Finance Code, as added by this Act,
26 applies only to an insurance policy that is delivered, issued for
27 delivery, or renewed on or after January 1, 2010. A policy

1 delivered, issued for delivery, or renewed before January 1, 2010,
2 is governed by the law as it existed immediately before the
3 effective date of this Act, and that law is continued in effect for
4 that purpose.

5 SECTION 31. (a) Subchapter H, Chapter 154, Finance Code, as
6 amended by this Act, does not apply to a loss under an
7 insurance-funded prepaid funeral benefits contract that arises
8 from or relates to the occurrence of one of the following events
9 before September 1, 2009:

- 10 (1) an event of default under the contract;
- 11 (2) the suspension, revocation, or refusal to renew
12 the permit of the contract seller under Chapter 154, Finance Code;
13 or
- 14 (3) the bankruptcy, receivership, seizure, or other
15 failure of the contract seller.

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

19 SECTION 32. Section 154.106(c), Finance Code, is repealed.

20 SECTION 33. (a) Except as provided by Subsection (b) of
21 this section, this Act takes effect September 1, 2009.

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

- 23 (1) Subchapter C-1, Chapter 154, Finance Code, as
24 added by this Act; and
- 25 (2) Section 154.2021(a), Finance Code, as added by
26 this Act.