

1-1 By: Nash (Senate Sponsor - Carona) H.B. No. 3004  
1-2 (In the Senate - Received from the House April 26, 2011;  
1-3 May 4, 2011, read first time and referred to Committee on Business  
1-4 and Commerce; May 10, 2011, reported favorably by the following  
1-5 vote: Yeas 9, Nays 0; May 10, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to prepaid funeral benefits contracts and the prepaid  
1-9 funeral contract guaranty fund.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 154.351(a), Finance Code, is amended to  
1-12 read as follows:

1-13 (a) The commission by rule shall establish and the  
1-14 department shall maintain a fund to guarantee performance by  
1-15 sellers of prepaid funeral benefits contracts and funeral providers  
1-16 under those contracts of their obligations to the purchasers.

1-17 SECTION 2. Section 154.353, Finance Code, is amended to  
1-18 read as follows:

1-19 Sec. 154.353. DEPOSIT OF FUND OR PORTION OF FUND. (a) The  
1-20 fund or a portion of the fund may be deposited ~~[with]~~:

1-21 (1) with the comptroller;

1-22 (2) with a federally insured financial institution  
1-23 that has its main office or a branch in this state; or

1-24 (3) in trust with a financial institution that has its  
1-25 main office or a branch in this state and is authorized to act as a  
1-26 fiduciary in this state.

1-27 (b) If the fund or a portion of the fund is deposited with  
1-28 the comptroller, the comptroller shall manage the deposit ~~[fund]~~ as  
1-29 trustee of money outside the state treasury.

1-30 SECTION 3. Section 154.355, Finance Code, is amended by  
1-31 amending Subsection (a) and adding Subsection (d) to read as  
1-32 follows:

1-33 (a) An advisory council composed of the following  
1-34 individuals shall supervise the operation and maintenance of the  
1-35 fund:

1-36 (1) the commissioner or the commissioner's  
1-37 representative;

1-38 (2) ~~[the attorney general or the attorney general's~~  
1-39 ~~representative,~~

1-40 ~~[(3)]~~ two representatives of the prepaid funeral  
1-41 industry appointed by the commission, one of whom represents  
1-42 trust-funded prepaid funeral benefits contract sellers and one of  
1-43 whom represents insurance-funded prepaid funeral benefits contract  
1-44 sellers; and

1-45 (3) ~~[(4)]~~ one consumer representative appointed by  
1-46 the commission.

1-47 (d) Notwithstanding Chapter 551, Government Code, or any  
1-48 other law, the advisory council may hold an open or closed meeting  
1-49 by telephone conference call, videoconference, or other similar  
1-50 telecommunication method if:

1-51 (1) notice is given for the meeting as for other  
1-52 meetings;

1-53 (2) the notice specifies a location for the meeting at  
1-54 which the public may attend;

1-55 (3) each part of the meeting that is required to be  
1-56 open to the public is audible to the public at the location  
1-57 specified in the notice of the meeting; and

1-58 (4) the meeting is recorded by electronic or other  
1-59 means and the recording of each portion of the meeting that is  
1-60 required to be open to the public is made available to the public.

1-61 SECTION 4. Section 154.357, Finance Code, is amended to  
1-62 read as follows:

1-63 Sec. 154.357. CLAIM AGAINST SELLER, FUNERAL PROVIDER, OR  
1-64 DEPOSITORY. The department may assert a claim against a seller,

2-1 funeral provider, or depository that commits a violation of this  
 2-2 chapter that could result in a claim against the fund.

2-3 SECTION 5. Section 154.358(b), Finance Code, is amended to  
 2-4 read as follows:

2-5 (b) A claim against the fund may be made by:

2-6 (1) a purchaser of a prepaid funeral benefits  
 2-7 contract;

2-8 (2) a purchaser's estate;

2-9 (3) a permit holder or funeral provider who assumes or  
 2-10 performs a contract; or

2-11 (4) a claimant for the benefit of a group of purchasers  
 2-12 of prepaid funeral benefits contracts as part of a plan to arrange  
 2-13 for another permit holder or funeral provider to assume the  
 2-14 contract obligations.

2-15 SECTION 6. Section 154.359(a), Finance Code, is amended to  
 2-16 read as follows:

2-17 (a) In addition to uses authorized by Section 154.354, the  
 2-18 fund may be used to pay:

2-19 (1) a loss attributable to the failure or inability of  
 2-20 a permit holder or funeral provider to perform its [~~the permit~~  
 2-21 ~~holder's~~] obligations under a prepaid funeral benefits contract;

2-22 (2) expenses of a plan to arrange for another permit  
 2-23 holder or funeral provider to assume the obligations of the permit  
 2-24 holder or funeral provider under a prepaid funeral benefits  
 2-25 contract or a group of prepaid funeral benefits contracts if the  
 2-26 commissioner finds, with the advice and consent of the advisory  
 2-27 council, that the plan is reasonable and in the best interests of  
 2-28 the contract beneficiaries;

2-29 (3) administrative expenses related to servicing and  
 2-30 handling outstanding prepaid funeral benefits contracts:

2-31 (A) that have not been assumed by another permit  
 2-32 holder; or

2-33 (B) the obligations under which have not been  
 2-34 assumed by another funeral provider;

2-35 (4) expenses for administering the receivership of an  
 2-36 insolvent permit holder or funeral provider if the permit holder's  
 2-37 or funeral provider's assets are insufficient to pay those  
 2-38 expenses; and

2-39 (5) expenses to employ and compensate a consultant, an  
 2-40 agent, legal counsel, an accountant, and any other person  
 2-41 appropriate and consistent with the purpose of the fund, as  
 2-42 determined by the advisory council.

2-43 SECTION 7. Subchapter H, Chapter 154, Finance Code, is  
 2-44 amended by adding Section 154.3595 to read as follows:

2-45 Sec. 154.3595. DEFAULT BY FUNERAL PROVIDER. (a) This  
 2-46 section applies to a permit holder that administers a prepaid  
 2-47 funeral benefits contract for which:

2-48 (1) the permit holder is not the funeral provider; and

2-49 (2) there is an actual or anticipated failure or  
 2-50 inability of the funeral provider to perform its obligations under  
 2-51 the contract.

2-52 (b) A permit holder to which this section applies shall make  
 2-53 a reasonable effort to find a substitute funeral provider willing  
 2-54 to assume the contractual obligations of the defaulting funeral  
 2-55 provider. A reasonable effort includes:

2-56 (1) identifying and contacting at least three funeral  
 2-57 providers within the same community or geographic service area as  
 2-58 the defaulting funeral provider;

2-59 (2) if at least three funeral providers do not exist  
 2-60 within the same community or geographic service area, identifying  
 2-61 and contacting at least three funeral providers within a 50-mile  
 2-62 radius of the defaulting funeral provider; and

2-63 (3) for both Subdivisions (1) and (2), first  
 2-64 contacting those funeral providers that the permit holder considers  
 2-65 have services and facilities that are comparable to the defaulting  
 2-66 funeral provider.

2-67 (c) A permit holder that is unable to locate a substitute  
 2-68 funeral provider as required by Subsection (b) shall submit  
 2-69 information to the advisory council describing or identifying:

3-1                   (1) all prepaid funeral benefits contracts to which  
3-2 the defaulting funeral provider is a party;  
3-3                   (2) to the extent known, the circumstances underlying  
3-4 the default by the original funeral provider and any attempt by the  
3-5 permit holder to address the default with the defaulting funeral  
3-6 provider;  
3-7                   (3) any effort by the permit holder to find a  
3-8 substitute funeral provider, including:  
3-9                   (A) the location and identity of each contacted  
3-10 funeral provider;  
3-11                   (B) the terms offered to the funeral provider;  
3-12 and  
3-13                   (C) the terms of any counteroffer or other  
3-14 response made by the funeral provider; and  
3-15                   (4) other information known to the permit holder that  
3-16 the permit holder believes may be relevant or useful to the advisory  
3-17 council.  
3-18                   (d) The permit holder shall cooperate with the department  
3-19 and the advisory council in facilitating selection of a substitute  
3-20 funeral provider by complying with any reasonable request for:  
3-21                   (1) additional information;  
3-22                   (2) assistance in negotiating with a potential  
3-23 substitute funeral provider; or  
3-24                   (3) assistance in communicating with a purchaser of an  
3-25 affected prepaid funeral benefits contract.  
3-26                   SECTION 8. The changes in law made by this Act to Subchapter  
3-27 H, Chapter 154, Finance Code, do not apply to a loss under a prepaid  
3-28 funeral benefits contract sold before the effective date of this  
3-29 Act that arises from or relates to the occurrence of one of the  
3-30 following events:  
3-31                   (1) an event of default under the contract  
3-32 attributable to the funeral provider unless the funeral provider is  
3-33 also the contract seller; or  
3-34                   (2) the bankruptcy, receivership, seizure, or other  
3-35 failure of the funeral provider unless the funeral provider is also  
3-36 the contract seller.  
3-37                   SECTION 9. This Act takes effect immediately if it receives  
3-38 a vote of two-thirds of all the members elected to each house, as  
3-39 provided by Section 39, Article III, Texas Constitution. If this  
3-40 Act does not receive the vote necessary for immediate effect, this  
3-41 Act takes effect September 1, 2011.

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