

By: Carona

S.B. No. 1166

A BILL TO BE ENTITLED

AN ACT

relating to prepaid funeral benefits contracts and the prepaid funeral contract guaranty fund.

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

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

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

SECTION 2. Section 154.353, Finance Code, is amended to read as follows:

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

(1) with the comptroller;

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

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

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

SECTION 3. Section 154.355, Finance Code, is amended by

1 amending Subsection (a) and adding Subsection (d) to read as
2 follows:

3 (a) An advisory council composed of the following
4 individuals shall supervise the operation and maintenance of the
5 fund:

6 (1) the commissioner or the commissioner's
7 representative;

8 (2) ~~[the attorney general or the attorney general's
9 representative;~~

10 ~~[(3)]~~ two representatives of the prepaid funeral
11 industry appointed by the commission, one of whom represents
12 trust-funded prepaid funeral benefits contract sellers and one of
13 whom represents insurance-funded prepaid funeral benefits contract
14 sellers; and

15 (3) ~~[(4)]~~ one consumer representative appointed by
16 the commission.

17 (d) Notwithstanding Chapter 551, Government Code, or any
18 other law, the advisory council may hold an open or closed meeting
19 by telephone conference call, videoconference, or other similar
20 telecommunication method if:

21 (1) notice is given for the meeting as for other
22 meetings;

23 (2) the notice specifies a location for the meeting at
24 which the public may attend;

25 (3) each part of the meeting that is required to be
26 open to the public is audible to the public at the location
27 specified in the notice of the meeting; and

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

4 SECTION 4. Section 154.357, Finance Code, is amended to
5 read as follows:

6 Sec. 154.357. CLAIM AGAINST SELLER, FUNERAL PROVIDER, OR
7 DEPOSITORY. The department may assert a claim against a seller,
8 funeral provider, or depository that commits a violation of this
9 chapter that could result in a claim against the fund.

10 SECTION 5. Subsection (b), Section 154.358, Finance Code,
11 is amended to read as follows:

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 or funeral provider to assume the
21 contract obligations.

22 SECTION 6. Subsection (a), Section 154.359, Finance Code,
23 is amended to read as follows:

24 (a) In addition to uses authorized by Section 154.354, the
25 fund may be used to pay:

26 (1) a loss attributable to the failure or inability of
27 a permit holder or funeral provider to perform its [~~the permit~~

1 ~~holder's]~~ obligations under a prepaid funeral benefits contract;

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

9 (3) administrative expenses related to servicing and
10 handling outstanding prepaid funeral benefits contracts:

11 (A) that have not been assumed by another permit
12 holder; or

13 (B) the obligations under which have not been
14 assumed by another funeral provider;

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

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

23 SECTION 7. Subchapter H, Chapter 154, Finance Code, is
24 amended by adding Section 154.3595 to read as follows:

25 Sec. 154.3595. DEFAULT BY FUNERAL PROVIDER. (a) This
26 section applies to a permit holder that sold and administers a
27 prepaid funeral benefits contract for which:

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

2 (2) there is an actual or anticipated failure or
3 inability of the funeral provider to perform its obligations under
4 the contract.

5 (b) A permit holder to which this section applies shall make
6 a reasonable effort to find a substitute funeral provider willing
7 to assume the contractual obligations of the defaulting funeral
8 provider. A reasonable effort includes:

9 (1) identifying and contacting at least three funeral
10 providers within the same community or geographic service area as
11 the defaulting funeral provider;

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

16 (3) for both Subdivisions (1) and (2), first
17 contacting those funeral providers that the permit holder considers
18 have services and facilities that are comparable to the defaulting
19 funeral provider.

20 (c) A permit holder that is unable to locate a substitute
21 funeral provider as required by Subsection (b) shall submit
22 information to the advisory council describing or identifying:

23 (1) all prepaid funeral benefits contracts to which
24 the defaulting funeral provider is a party;

25 (2) to the extent known, the circumstances underlying
26 the default by the original funeral provider and any attempt by the
27 permit holder to address the default with the defaulting funeral

1 provider;

2 (3) any effort by the permit holder to find a
3 substitute funeral provider, including:

4 (A) the location and identity of each contacted
5 funeral provider;

6 (B) the terms offered to the funeral provider;
7 and

8 (C) the terms of any counteroffer or other
9 response made by the funeral provider; and

10 (4) other information known to the permit holder that
11 the permit holder believes may be relevant or useful to the advisory
12 council.

13 (d) The permit holder shall cooperate with the department
14 and the advisory council in facilitating selection of a substitute
15 funeral provider by complying with any reasonable request for:

16 (1) additional information;

17 (2) assistance in negotiating with a potential
18 substitute funeral provider; or

19 (3) assistance in communicating with a purchaser of an
20 affected prepaid funeral benefits contract.

21 SECTION 8. The changes in law made by this Act to Subchapter
22 H, Chapter 154, Finance Code, do not apply to a loss under a prepaid
23 funeral benefits contract sold before the effective date of this
24 Act that arises from or relates to the occurrence of one of the
25 following events:

26 (1) an event of default under the contract
27 attributable to the funeral provider unless the funeral provider is

1 also the contract seller; or

2 (2) the bankruptcy, receivership, seizure, or other
3 failure of the funeral provider unless the funeral provider is also
4 the contract seller.

5 SECTION 9. This Act takes effect immediately if it receives
6 a vote of two-thirds of all the members elected to each house, as
7 provided by Section 39, Article III, Texas Constitution. If this
8 Act does not receive the vote necessary for immediate effect, this
9 Act takes effect September 1, 2011.