

BILL ANALYSIS

Senate Research Center

S.B. 297
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Business & Commerce
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Department of Banking (TDB) regulates prepaid funeral benefits contracts and issues permits to companies authorizing the companies and individuals to sell such benefits. In fiscal year 2012, 394 companies or individuals held permits to sell prepaid funeral benefits. The value of those contracts as monitored by TDB was over 3.2 billion dollars. Due to the rapid growth of this industry, there is an increased potential for fraud and therefore a need to provide TDB with tools to ensure sound business practices and protect consumers from fraud.

S.B. 297 amends current law relating to prepaid funeral benefits contracts.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 154.106, Finance Code, as follows:

Sec. 154.106. TRANSFER OF BUSINESS OWNERSHIP. (a) Requires a permit holder to notify the Texas Department of Banking (TDB) and either the depository of the money held under Subchapter F (Trust-Funded Prepaid Funeral Benefits) or the issuer of insurance policy funding contracts under Subchapter E (Insurance-Funded Prepaid Funeral Benefits) of a transfer of ownership of the permit holder's business or a transfer of 25 percent or more of the stock or other ownership or membership interest of the business in a single transaction, rather than of a contract to transfer ownership of the permit holder's business not later than the seventh day after the date the contract is executed. Requires that the notice be given:

(1) in the case of a voluntary transfer, not later than the seventh day after the date the contract for transfer is executed; or

(2) in the case of an involuntary transfer, not later than the first business day after the date the permit holder receives notice of the impending foreclosure or other involuntary transfer.

(b) Requires the proposed transferee to file an application for a permit with TDB in accordance with this subchapter, if the proposed transferee will own 51 percent or more of the business and is not a permit holder.

(c) Authorizes the applicant to request a hearing not later than the 15th day after the date on which notice of the determination is hand-delivered or the notice is mailed, whichever date is earlier, if the banking commissioner of Texas (commissioner) denies the application.

SECTION 2. Amends Section 154.107, Finance Code, as follows:

Sec. 154.107. New heading: REQUIRED RENEWAL FOR SELLERS. (a) Creates this subsection from existing text. Requires a seller that has outstanding contracts, rather than a seller that discontinues the sale of prepaid funeral benefits but has outstanding contracts, to renew the seller's permit until the contracts are fully discharged.

(b) Authorizes a seller to renew the seller's permit as an unrestricted permit if the seller:

(1) wishes to continue to sell prepaid funeral benefits; and

(2) demonstrates to the commissioner that the seller continues to meet the qualifications and satisfy the requirements that apply to an applicant for a permit.

(c) Requires a seller to renew the seller's permit as a restricted permit if the seller:

(1) cannot demonstrate to the commissioner that the seller continues to meet the qualifications and satisfy the requirements that apply to an applicant for a permit; or

(2) no longer wishes to sell prepaid funeral benefits.

(d) Prohibits a seller that holds a restricted permit from selling prepaid funeral benefits during the period a restricted permit is in effect. Provides that a contract entered into by a seller that at the time the contract is entered into holds a restricted permit is void and unenforceable and is not eligible for payment from a guaranty fund established under this chapter.

SECTION 3. Amends Section 154.161(a), Finance Code, to require the funeral provider under a prepaid funeral benefits contract subject to this chapter, to take certain actions, including, with respect to each prepaid funeral benefits contract for which the funeral provider is not also the seller, inform each seller with which the funeral provider has an outstanding contract of any closure of the provider's funeral establishments not later than the 15th day after the date of closure.

SECTION 4. Amends Section 154.253, Finance Code, as follows:

Sec. 154.253. DEPOSIT OF MONEY PAID OR COLLECTED. (a) Requires that the money, other than money retained as provided by Section 154.252 (Retention of Money for Expenses), not later than the 30th day after the date of collection, be deposited in a financial institution that has its main office or a branch in this state in an interest-bearing restricted account insured by the federal government or in trust with a financial institution that has its main office or a branch located in this state and is authorized to act as a fiduciary in this state, to be invested by the financial institution as trustee in accordance with this subchapter.

(b) Requires that an account described by Subsection (a), including a trust account, be carried in the name of the funeral provider or other entity to whom the purchaser makes payment and include the words "prepaid funeral benefits" or "pre-need funeral benefits."

SECTION 5. Amends Section 154.3595, Finance Code, by adding Subsection (a-1), as follows:

(a-1) Requires a permit holder to which Section 154.3595 (Default by Funeral Provider) applies to notify each purchaser of an outstanding prepaid funeral benefits contract of any closure of the funeral provider named in the contract not later than the 90th day after the date of its receipt of notice of the closure.

SECTION 6. Amends Subchapter I, Chapter 154, Finance Code, by adding Section 154.400, as follows:

Sec. 154.400. INVESTIGATION AND SUBPOENA AUTHORITY. (a) Authorizes the commissioner, if the commissioner has a reasonable suspicion of a misallocation or defalcation of prepaid funeral funds or an unauthorized sale of prepaid funeral benefits, to conduct investigations as the commissioner considers necessary or appropriate to determine whether a misallocation or defalcation of prepaid funeral funds has occurred or an unauthorized sale of prepaid funeral benefits has occurred.

(b) Authorizes the commissioner to issue a subpoena to compel the attendance and testimony of a person under oath or the production of documents related to an investigation conducted under Subsection (a). Authorizes the subpoena to require attendance and production at TDB's offices in Austin, Texas, or at another place the commissioner designates.

(c) Provides that a subpoena issued under this section to a financial institution is not subject to Section 59.006 (Discovery of Customer Records).

(d) Authorizes a district court in Travis County or the county in which the subpoena was served, on application by the commissioner, to issue an order requiring a person to appear before the commissioner and produce documents or give evidence regarding the matter under investigation if the person refuses to obey a subpoena.

SECTION 7. Amends Section 154.4061(a), Finance Code, to require, rather than authorize, the trier of fact to recommend to the commissioner that the maximum administrative penalty permitted under Section 154.406 (Administrative Penalty) be imposed on the person committing the violation or that the commissioner cancel or not renew the person's permit under this chapter if, after a hearing conducted as provided by Chapter 2001 (Administrative Procedure), Government Code, the trier of fact finds that a violation of this chapter or a rule of the Finance Commission of Texas (finance commission) establishes a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission.

SECTION 8. Amends Section 154.407, Finance Code, to authorize the commissioner to sue to enjoin a violation or threatened violation of this chapter or a final order of the commissioner or rule of the commission in a district court in Travis County or the county in which the violation occurred.

SECTION 9. Amends Section 154.4081(c), Finance Code, to require that the written request for a hearing to show that an emergency order should be stayed be filed with the commissioner not later than the 30th day after the date on which the order is hand-delivered or the order is mailed, whichever date is earlier.

SECTION 10. Amends Section 154.409(b), Finance Code, to require the attorney general to institute suit in the name of this state against a person who violates this chapter in a district court in Travis County or the county in which the violation occurred.

SECTION 11. Amends Section 154.412, Finance Code, by amending Subsection (c-1) and adding Subsection (h), as follows:

(c-1) Requires that the written request for a hearing to show that an emergency order should be stayed be filed with the commissioner not later than the 30th day after the date on which the order is hand-delivered or the order is mailed, whichever date is earlier.

(h) Provides that a record seized as provided by Subsection (a) (relating to seizure of certain prepaid funeral accounts and records), or a record created by or filed with TDB in connection with a seizure, is admissible as evidence in any proceeding before the commissioner without prior proof of its correctness and without other proof on certification by the commissioner. Provides that the certified record or a certified copy of the record is prima facie evidence of the facts contained in the record. Provides that this

subsection does not limit another provision of this subtitle or a provision of another law that provides for the admission of evidence or its evidentiary value.

SECTION 12. Amends Section 154.414, Finance Code, to authorize the commissioner, after an order issued under Section 154.412(a) becomes final and unappealable, to petition to request the issuance of an order to show cause why the business and affairs of that person should not be liquidated and a receiver appointed by the court for that purpose under certain circumstances in a district court in Travis County or in the county in which a person required to hold a permit under this chapter resides.

SECTION 13. Amends Subchapter I, Chapter 154, Finance Code, by adding Sections 154.415 and 154.416, as follows:

Sec. 154.415. PROHIBITION ORDER. (a) Authorizes the commissioner to prohibit a person from participating in the business of prepaid funeral benefits sales if the commissioner determines from examination or other credible evidence that:

(1) the person:

(A) intentionally committed or participated in the commission of an act described by Section 154.401 (Criminal Penalty for Certain Violations of Chapter);

(B) violated a final cease and desist order issued by TDB or another state agency related to the sale of prepaid funeral benefits; or

(C) made, or caused to be made, false entries in the records of a prepaid funeral benefits seller;

(2) because of the action by the person described by Subdivision (1):

(A) the purchaser or seller of prepaid funeral benefits has suffered or will probably suffer financial loss or expense, or other damage;

(B) the interests of the purchaser have been or could be prejudiced; or

(C) the person has received financial gain or other benefit by reason of the action, or likely would have if the action had not been discovered; and

(3) the action involves personal dishonesty on the part of the person.

(b) Authorizes the commissioner to serve a proposed prohibition order on a person alleged to have committed or participated in the action if the commissioner has grounds for action under Subsection (a) and finds that a prohibition order appears to be necessary and in the best interest of the public. Requires that the proposed order:

(1) be personally delivered or mailed by registered or certified mail, return receipt requested;

(2) state with reasonable certainty the grounds for prohibition;

(3) state the effective date of the order, which may not be before the 21st day after the date the proposed order is personally delivered or mailed; and

(4) state the duration of the order, including whether the duration is perpetual.

(c) Authorizes the commissioner to make a prohibition order perpetual or effective for a specific period of time, to probate the order, or to impose other conditions on the order.

(d) Provides that the order takes effect if the person against whom the proposed order is directed does not request a hearing in writing before the effective date. Provides that the order, if the person does not request a hearing before the effective date, is final and not appealable as to the person.

(e) Requires that the hearing be conducted as provided by Chapter 2001, Government Code, and commission rules, if the person requests a hearing as provided by Subsection (d). Requires the commissioner to issue or decline to issue the proposed order after the hearing. Authorizes the proposed order to be modified as necessary to conform to the findings at the hearing.

(f) Provides that an order issued under Subsection (e) is immediately final for purposes of enforcement and appeal. Authorizes an appeal of the order as provided by Sections 31.202 (Appeal of Banking Commissioner Decision or Order), 31.203 (Appeal to Finance Commission), and 31.204 (Direct Appeal to Court or Appeal of Finance Commission Order).

Sec. 154.416. APPLICATION FOR RELEASE FROM PROHIBITION ORDER. (a) Authorizes a person who is subject to a prohibition order issued under Section 154.415 to apply to the commissioner to be released from the order after the expiration of 10 years from the date of issuance, regardless of the order's stated duration or date of issuance.

(b) Requires that the application be made under oath and in the form required by the commissioner. Requires that the application be accompanied by any required fees.

(c) Authorizes the commissioner, in the exercise of discretion, to approve or deny an application filed under this section.

(d) Provides that the commissioner's decision under Subsection (c) is final and not appealable.

SECTION 14. Effective date: September 1, 2013.