

By: Carona
(Flynn)

S.B. No. 297

A BILL TO BE ENTITLED

AN ACT

relating to prepaid funeral benefits contracts.

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

SECTION 1. Section 154.106, Finance Code, is amended to read as follows:

Sec. 154.106. TRANSFER OF BUSINESS OWNERSHIP. (a) A permit holder shall notify 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 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. The notice must 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) If the proposed transferee will own 51 percent or more of the business and is not a permit holder, the proposed transferee shall file an application for a permit with the department in accordance with this subchapter. If the application is complete,

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

6 (c) If the commissioner denies the application, the
7 applicant may request a hearing not later than the 15th day after
8 the date on which notice of the determination is hand-delivered or
9 the notice is mailed, whichever date is earlier.

10 SECTION 2. Section 154.107, Finance Code, is amended to
11 read as follows:

12 Sec. 154.107. REQUIRED RENEWAL FOR [CERTAIN] SELLERS.

13 (a) A seller that [~~discontinues the sale of prepaid funeral~~
14 ~~benefits but~~] has outstanding contracts shall renew the seller's
15 permit until the contracts are fully discharged.

16 (b) A seller may renew the seller's permit as an
17 unrestricted permit if the seller:

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

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

23 (c) A seller must renew the seller's permit as a restricted
24 permit if the seller:

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

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

2 (d) A seller that holds a restricted permit may not sell
3 prepaid funeral benefits during the period a restricted permit is
4 in effect. A contract entered into by a seller that at the time the
5 contract is entered into holds a restricted permit is void and
6 unenforceable and is not eligible for payment from a guaranty fund
7 established under this chapter.

8 SECTION 3. Subsection (a), Section 154.161, Finance Code,
9 is amended to read as follows:

10 (a) The funeral provider under a prepaid funeral benefits
11 contract subject to this chapter shall:

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

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

17 (A) deliver the contracted funeral merchandise
18 and services and cash advance items required under the contract,
19 subject to Section 154.1551;

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

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

27 (D) retain a copy of each reconciliation until

1 the third anniversary of the date of service; and

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

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

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

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

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

18 (E) inform each seller with which the funeral
19 provider has an outstanding contract of any closure of the
20 provider's funeral establishments not later than the 15th day after
21 the date of closure.

22 SECTION 4. Section 154.253, Finance Code, is amended to
23 read as follows:

24 Sec. 154.253. DEPOSIT OF MONEY PAID OR COLLECTED. (a) Not
25 later than the 30th day after the date of collection, the money,
26 other than money retained as provided by Section 154.252, shall be
27 deposited:

1 (1) in a financial institution that has its main
2 office or a branch in this state in an interest-bearing restricted
3 account insured by the federal government; or

4 (2) in trust with a financial institution that has its
5 main office or a branch located in this state and is authorized to
6 act as a fiduciary in this state, to be invested by the financial
7 institution as trustee in accordance with this subchapter.

8 (b) An account described by Subsection (a), including a
9 trust account, shall be carried in the name of the funeral provider
10 or other entity to whom the purchaser makes payment and must include
11 the words "prepaid funeral benefits" or "pre-need funeral
12 benefits."~~[]~~

13 SECTION 5. Section 154.3595, Finance Code, is amended by
14 adding Subsection (a-1) to read as follows:

15 (a-1) A permit holder to which this section applies shall
16 notify each purchaser of an outstanding prepaid funeral benefits
17 contract of any closure of the funeral provider named in the
18 contract not later than the 90th day after the date of its receipt
19 of notice of the closure.

20 SECTION 6. Subchapter I, Chapter 154, Finance Code, is
21 amended by adding Section 154.400 to read as follows:

22 Sec. 154.400. INVESTIGATION AND SUBPOENA AUTHORITY.

23 (a) If the commissioner has a reasonable suspicion of a
24 misallocation or defalcation of prepaid funeral funds or an
25 unauthorized sale of prepaid funeral benefits, the commissioner may
26 conduct investigations as the commissioner considers necessary or
27 appropriate to determine whether:

1 (1) a misallocation or defalcation of prepaid funeral
2 funds has occurred; or

3 (2) an unauthorized sale of prepaid funeral benefits
4 has occurred.

5 (b) The commissioner may issue a subpoena to compel the
6 attendance and testimony of a person under oath or the production of
7 documents related to an investigation conducted under Subsection
8 (a). The subpoena may require attendance and production at the
9 department's offices in Austin, Texas, or at another place the
10 commissioner designates.

11 (c) A subpoena issued under this section to a financial
12 institution is not subject to Section 59.006.

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

18 SECTION 7. Subsection (a), Section 154.4061, Finance Code,
19 is amended to read as follows:

20 (a) If, after a hearing conducted as provided by Chapter
21 2001, Government Code, the trier of fact finds that a violation of
22 this chapter or a rule of the Finance Commission of Texas
23 establishes a pattern of wilful disregard for the requirements of
24 this chapter or rules of the finance commission, the trier of fact
25 may [~~shall~~] recommend to the commissioner that the maximum
26 administrative penalty permitted under Section 154.406 be imposed
27 on the person committing the violation or that the commissioner

1 cancel or not renew the person's permit under this chapter.

2 SECTION 8. Section 154.407, Finance Code, is amended to
3 read as follows:

4 Sec. 154.407. INJUNCTIVE RELIEF. The commissioner may sue
5 in a district court in Travis County or the county in which the
6 violation occurred to enjoin a violation or threatened violation
7 of:

8 (1) this chapter; or

9 (2) a final order of the commissioner or rule of the
10 commission.

11 SECTION 9. Subsection (c), Section 154.4081, Finance Code,
12 is amended to read as follows:

13 (c) The person named in the order may request in writing an
14 opportunity for a hearing to show that the emergency order should be
15 stayed. The written request for a hearing must be filed with the
16 commissioner not later than the 30th day after the date on which the
17 order is hand-delivered or the order is mailed, whichever date is
18 earlier. On receipt of the request, the commissioner shall set a
19 time for the hearing before the 22nd day after the date the
20 commissioner received the request, unless extended at the request
21 of the person named in the order.

22 SECTION 10. Subsection (b), Section 154.409, Finance Code,
23 is amended to read as follows:

24 (b) The attorney general shall institute suit in the name of
25 this state against a person who violates this chapter in a district
26 court in Travis County or the county in which the violation
27 occurred.

1 SECTION 11. Section 154.412, Finance Code, is amended by
2 amending Subsection (c-1) and adding Subsection (h) to read as
3 follows:

4 (c-1) An emergency order remains in effect unless stayed by
5 the commissioner. The person named in the order may request in
6 writing an opportunity for a hearing to show that the emergency
7 order should be stayed. The written request for a hearing must be
8 filed with the commissioner not later than the 30th day after the
9 date on which the order is hand-delivered or the order is mailed,
10 whichever date is earlier. On receipt of the request, the
11 commissioner shall set a time before the 22nd day after the date the
12 commissioner received the request, unless extended at the request
13 of the person named in the order. The hearing is an administrative
14 hearing relating to the findings that support immediate effect of
15 the order.

16 (h) On certification by the commissioner, a record seized as
17 provided by Subsection (a) or a record created by or filed with the
18 department in connection with a seizure is admissible as evidence
19 in any proceeding before the commissioner without prior proof of
20 its correctness and without other proof. The certified record or a
21 certified copy of the record is prima facie evidence of the facts
22 contained in the record. This subsection does not limit another
23 provision of this subtitle or a provision of another law that
24 provides for the admission of evidence or its evidentiary value.

25 SECTION 12. Section 154.414, Finance Code, is amended to
26 read as follows:

27 Sec. 154.414. LIQUIDATION OF BUSINESS AND AFFAIRS OF PERSON

1 FOLLOWING SEIZURE OF MONEY AND RECORDS. After an order issued under
2 Section 154.412(a) becomes final and unappealable, the
3 commissioner may petition a [~~the~~] district court in Travis County
4 or in the county in which a person required to hold a permit under
5 this chapter resides to request the issuance of an order to show
6 cause why the business and affairs of that person should not be
7 liquidated and a receiver appointed by the court for that purpose
8 if:

9 (1) the person:

10 (A) failed to deposit money in accordance with
11 Subchapter F;

12 (B) misappropriated, converted, or illegally
13 withheld or failed or refused to pay on demand money entrusted to
14 that person that belongs to the beneficiary under a prepaid funeral
15 benefits contract; or

16 (C) allowed the person's permit to lapse or had
17 the permit revoked under this chapter and did not make adequate
18 provision for the administration of the money deposited with the
19 person for prepaid funeral benefits contracts in accordance with
20 the contract and applicable law, including rules; and

21 (2) the person failed or refused to correct the
22 violation before the 31st day after the date the person received
23 written notice from the commissioner.

24 SECTION 13. Subchapter I, Chapter 154, Finance Code, is
25 amended by adding Sections 154.415 and 154.416 to read as follows:

26 Sec. 154.415. PROHIBITION ORDER. (a) The commissioner may
27 prohibit a person from participating in the business of prepaid

1 funeral benefits sales if the commissioner determines from
2 examination or other credible evidence that:

3 (1) the person:

4 (A) intentionally committed or participated in
5 the commission of an act described by Section 154.401;

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

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

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

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

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

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

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

23 (b) If the commissioner has grounds for action under
24 Subsection (a) and finds that a prohibition order appears to be
25 necessary and in the best interest of the public, the commissioner
26 may serve a proposed prohibition order on a person alleged to have
27 committed or participated in the action. The proposed order must:

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

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

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

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

10 (c) The commissioner may make a prohibition order perpetual
11 or effective for a specific period of time, may probate the order,
12 or may impose other conditions on the order.

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

18 (e) If the person requests a hearing as provided by
19 Subsection (d), the hearing must be conducted as provided by
20 Chapter 2001, Government Code, and commission rules. After the
21 hearing, the commissioner shall issue or decline to issue the
22 proposed order. The proposed order may be modified as necessary to
23 conform to the findings at the hearing.

24 (f) An order issued under Subsection (e) is immediately
25 final for purposes of enforcement and appeal. The order may be
26 appealed as provided by Sections 31.202, 31.203, and 31.204.

27 Sec. 154.416. APPLICATION FOR RELEASE FROM PROHIBITION

1 ORDER. (a) After the expiration of 10 years from the date of
2 issuance, a person who is subject to a prohibition order issued
3 under Section 154.415, regardless of the order's stated duration or
4 date of issuance, may apply to the commissioner to be released from
5 the order.

6 (b) The application must be made under oath and in the form
7 required by the commissioner. The application must be accompanied
8 by any required fees.

9 (c) The commissioner, in the exercise of discretion, may
10 approve or deny an application filed under this section.

11 (d) The commissioner's decision under Subsection (c) is
12 final and not appealable.

13 SECTION 14. This Act takes effect September 1, 2013.