

1-1 By: Carona S.B. No. 297
1-2 (In the Senate - Filed January 29, 2013; February 5, 2013,
1-3 read first time and referred to Committee on Business and Commerce;
1-4 February 13, 2013, reported adversely, with favorable Committee
1-5 Substitute by the following vote: Yeas 9, Nays 0;
1-6 February 13, 2013, sent to printer.)

1-7 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-8				
1-9	Carona	X		
1-10	Taylor	X		
1-11	Eltife	X		
1-12	Estes	X		
1-13	Hancock	X		
1-14	Lucio	X		
1-15	Van de Putte	X		
1-16	Watson	X		
1-17	Whitmire	X		

1-18 COMMITTEE SUBSTITUTE FOR S.B. No. 297 By: Carona

1-19 A BILL TO BE ENTITLED
1-20 AN ACT

1-21 relating to prepaid funeral benefits contracts.
1-22 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:
1-23 SECTION 1. Section 154.106, Finance Code, is amended to
1-24 read as follows:
1-25 Sec. 154.106. TRANSFER OF BUSINESS OWNERSHIP. (a) A
1-26 permit holder shall notify the department and either the depository
1-27 of the money held under Subchapter F or the issuer of insurance
1-28 policy funding contracts under Subchapter E of a [~~contract to~~]
1-29 transfer of ownership of the permit holder's business or a transfer
1-30 of 25 percent or more of the stock or other ownership or membership
1-31 interest of the business in a single transaction. The notice must
1-32 be given:
1-33 (1) in the case of a voluntary transfer, not later than
1-34 the seventh day after the date the contract for transfer is
1-35 executed; or
1-36 (2) in the case of an involuntary transfer, not later
1-37 than the first business day after the date the permit holder
1-38 receives notice of the impending foreclosure or other involuntary
1-39 transfer.
1-40 (b) If the proposed transferee will own 51 percent or more
1-41 of the business and is not a permit holder, the proposed transferee
1-42 shall file an application for a permit with the department in
1-43 accordance with this subchapter. If the application is complete,
1-44 the commissioner shall approve or deny the application before the
1-45 16th day after the date the application was received. The transfer
1-46 of prepaid funeral benefits contracts of the permit holder that is
1-47 the transferor may not occur until after the date a permit is issued
1-48 to the applicant that is the transferee.
1-49 (c) If the commissioner denies the application, the
1-50 applicant may request a hearing not later than the 15th day after
1-51 the date on which notice of the determination is hand-delivered or
1-52 the notice is mailed, whichever date is earlier.
1-53 SECTION 2. Section 154.107, Finance Code, is amended to
1-54 read as follows:
1-55 Sec. 154.107. REQUIRED RENEWAL FOR [CERTAIN] SELLERS.
1-56 (a) A seller that [~~discontinues the sale of prepaid funeral~~
1-57 ~~benefits but~~] has outstanding contracts shall renew the seller's
1-58 permit until the contracts are fully discharged.
1-59 (b) A seller may renew the seller's permit as an
1-60 unrestricted permit if the seller:

2-1 (1) wishes to continue to sell prepaid funeral
 2-2 benefits; and

2-3 (2) demonstrates to the commissioner that the seller
 2-4 continues to meet the qualifications and satisfy the requirements
 2-5 that apply to an applicant for a permit.

2-6 (c) A seller must renew the seller's permit as a restricted
 2-7 permit if the seller:

2-8 (1) cannot demonstrate to the commissioner that the
 2-9 seller continues to meet the qualifications and satisfy the
 2-10 requirements that apply to an applicant for a permit; or

2-11 (2) no longer wishes to sell prepaid funeral benefits.

2-12 (d) A seller that holds a restricted permit may not sell
 2-13 prepaid funeral benefits during the period a restricted permit is
 2-14 in effect. A contract entered into by a seller that at the time the
 2-15 contract is entered into holds a restricted permit is void and
 2-16 unenforceable and is not eligible for payment from a guaranty fund
 2-17 established under this chapter.

2-18 SECTION 3. Subsection (a), Section 154.161, Finance Code,
 2-19 is amended to read as follows:

2-20 (a) The funeral provider under a prepaid funeral benefits
 2-21 contract subject to this chapter shall:

2-22 (1) in compliance with applicable law, protect any
 2-23 nonpublic personal financial and health information of the
 2-24 purchaser and contract beneficiary in the possession of the funeral
 2-25 provider;

2-26 (2) after the death of the contract beneficiary:

2-27 (A) deliver the contracted funeral merchandise
 2-28 and services and cash advance items required under the contract,
 2-29 subject to Section 154.1551;

2-30 (B) prepare a written pre-need to at-need
 2-31 reconciliation to verify that the specified goods and services are
 2-32 delivered or performed for the agreed price and promptly refund any
 2-33 contract overcharges that may be revealed by the reconciliation;

2-34 (C) if advance payment of cash advance items was
 2-35 included in the contract, prepare a reconciliation of proceeds
 2-36 applied to cash advance items; and

2-37 (D) retain a copy of each reconciliation until
 2-38 the third anniversary of the date of service; and

2-39 (3) with respect to each prepaid funeral benefits
 2-40 contract for which the funeral provider is not also the seller:

2-41 (A) sign the reconciliations required by
 2-42 Subdivision (2);

2-43 (B) promptly deliver the records that verify
 2-44 contract performance to the seller, including the final at-need
 2-45 contract, the certificate of performance, and the reconciliations
 2-46 required under Subdivision (2);

2-47 (C) if requested by the seller, correct or
 2-48 explain any discrepancy in a reconciliation required under
 2-49 Subdivision (2); ~~and~~

2-50 (D) subject to Subsection (d), provide copies of
 2-51 any other records or documentation related to the offer, sale, and
 2-52 performance of the contract that are reasonably requested by the
 2-53 seller or the department, including records related to any refund
 2-54 required by Section 154.1511 or 154.1551; and

2-55 (E) inform each seller with which the funeral
 2-56 provider has an outstanding contract of any closure of the
 2-57 provider's funeral establishments not later than the 15th day after
 2-58 the date of closure.

2-59 SECTION 4. Section 154.253, Finance Code, is amended to
 2-60 read as follows:

2-61 Sec. 154.253. DEPOSIT OF MONEY PAID OR COLLECTED. (a) Not
 2-62 later than the 30th day after the date of collection, the money,
 2-63 other than money retained as provided by Section 154.252, shall be
 2-64 deposited:

2-65 (1) in a financial institution that has its main
 2-66 office or a branch in this state in an interest-bearing restricted
 2-67 account insured by the federal government; or

2-68 (2) in trust with a financial institution that has its
 2-69 main office or a branch located in this state and is authorized to

3-1 act as a fiduciary in this state, to be invested by the financial
3-2 institution as trustee in accordance with this subchapter.

3-3 (b) An account described by Subsection (a), including a
3-4 trust account, shall be carried in the name of the funeral provider
3-5 or other entity to whom the purchaser makes payment and must include
3-6 the words "prepaid funeral benefits" or "pre-need funeral
3-7 benefits."~~[+]~~

3-8 SECTION 5. Section 154.3595, Finance Code, is amended by
3-9 adding Subsection (a-1) to read as follows:

3-10 (a-1) A permit holder to which this section applies shall
3-11 notify each purchaser of an outstanding prepaid funeral benefits
3-12 contract of any closure of the funeral provider named in the
3-13 contract not later than the 90th day after the date of its receipt
3-14 of notice of the closure.

3-15 SECTION 6. Subchapter I, Chapter 154, Finance Code, is
3-16 amended by adding Section 154.400 to read as follows:

3-17 Sec. 154.400. INVESTIGATION AND SUBPOENA AUTHORITY.

3-18 (a) If the commissioner has a reasonable suspicion of a
3-19 misallocation or defalcation of prepaid funeral funds or an
3-20 unauthorized sale of prepaid funeral benefits, the commissioner may
3-21 conduct investigations as the commissioner considers necessary or
3-22 appropriate to determine whether:

3-23 (1) a misallocation or defalcation of prepaid funeral
3-24 funds has occurred; or

3-25 (2) an unauthorized sale of prepaid funeral benefits
3-26 has occurred.

3-27 (b) The commissioner may issue a subpoena to compel the
3-28 attendance and testimony of a person under oath or the production of
3-29 documents related to an investigation conducted under Subsection

3-30 (a). The subpoena may require attendance and production at the
3-31 department's offices in Austin, Texas, or at another place the
3-32 commissioner designates.

3-33 (c) A subpoena issued under this section to a financial
3-34 institution is not subject to Section 59.006.

3-35 (d) If a person refuses to obey a subpoena, a district court
3-36 in Travis County or the county in which the subpoena was served, on
3-37 application by the commissioner, may issue an order requiring the
3-38 person to appear before the commissioner and produce documents or
3-39 give evidence regarding the matter under investigation.

3-40 SECTION 7. Subsection (a), Section 154.4061, Finance Code,
3-41 is amended to read as follows:

3-42 (a) If, after a hearing conducted as provided by Chapter
3-43 2001, Government Code, the trier of fact finds that a violation of
3-44 this chapter or a rule of the Finance Commission of Texas
3-45 establishes a pattern of wilful disregard for the requirements of
3-46 this chapter or rules of the finance commission, the trier of fact
3-47 may ~~[shall]~~ recommend to the commissioner that the maximum
3-48 administrative penalty permitted under Section 154.406 be imposed
3-49 on the person committing the violation or that the commissioner
3-50 cancel or not renew the person's permit under this chapter.

3-51 SECTION 8. Section 154.407, Finance Code, is amended to
3-52 read as follows:

3-53 Sec. 154.407. INJUNCTIVE RELIEF. The commissioner may sue
3-54 in a district court in Travis County or the county in which the
3-55 violation occurred to enjoin a violation or threatened violation
3-56 of:

3-57 (1) this chapter; or

3-58 (2) a final order of the commissioner or rule of the
3-59 commission.

3-60 SECTION 9. Subsection (c), Section 154.4081, Finance Code,
3-61 is amended to read as follows:

3-62 (c) The person named in the order may request in writing an
3-63 opportunity for a hearing to show that the emergency order should be
3-64 stayed. The written request for a hearing must be filed with the
3-65 commissioner not later than the 30th day after the date on which the
3-66 order is hand-delivered or the order is mailed, whichever date is
3-67 earlier. On receipt of the request, the commissioner shall set a
3-68 time for the hearing before the 22nd day after the date the
3-69 commissioner received the request, unless extended at the request

4-1 of the person named in the order.

4-2 SECTION 10. Subsection (b), Section 154.409, Finance Code,
4-3 is amended to read as follows:

4-4 (b) The attorney general shall institute suit in the name of
4-5 this state against a person who violates this chapter in a district
4-6 court in Travis County or the county in which the violation
4-7 occurred.

4-8 SECTION 11. Section 154.412, Finance Code, is amended by
4-9 amending Subsection (c-1) and adding Subsection (h) to read as
4-10 follows:

4-11 (c-1) An emergency order remains in effect unless stayed by
4-12 the commissioner. The person named in the order may request in
4-13 writing an opportunity for a hearing to show that the emergency
4-14 order should be stayed. The written request for a hearing must be
4-15 filed with the commissioner not later than the 30th day after the
4-16 date on which the order is hand-delivered or the order is mailed,
4-17 whichever date is earlier. On receipt of the request, the
4-18 commissioner shall set a time before the 22nd day after the date the
4-19 commissioner received the request, unless extended at the request
4-20 of the person named in the order. The hearing is an administrative
4-21 hearing relating to the findings that support immediate effect of
4-22 the order.

4-23 (h) On certification by the commissioner, a record seized as
4-24 provided by Subsection (a) or a record created by or filed with the
4-25 department in connection with a seizure is admissible as evidence
4-26 in any proceeding before the commissioner without prior proof of
4-27 its correctness and without other proof. The certified record or a
4-28 certified copy of the record is prima facie evidence of the facts
4-29 contained in the record. This subsection does not limit another
4-30 provision of this subtitle or a provision of another law that
4-31 provides for the admission of evidence or its evidentiary value.

4-32 SECTION 12. Section 154.414, Finance Code, is amended to
4-33 read as follows:

4-34 Sec. 154.414. LIQUIDATION OF BUSINESS AND AFFAIRS OF PERSON
4-35 FOLLOWING SEIZURE OF MONEY AND RECORDS. After an order issued under
4-36 Section 154.412(a) becomes final and unappealable, the
4-37 commissioner may petition a [the] district court in Travis County
4-38 or in the county in which a person required to hold a permit under
4-39 this chapter resides to request the issuance of an order to show
4-40 cause why the business and affairs of that person should not be
4-41 liquidated and a receiver appointed by the court for that purpose
4-42 if:

4-43 (1) the person:

4-44 (A) failed to deposit money in accordance with
4-45 Subchapter F;

4-46 (B) misappropriated, converted, or illegally
4-47 withheld or failed or refused to pay on demand money entrusted to
4-48 that person that belongs to the beneficiary under a prepaid funeral
4-49 benefits contract; or

4-50 (C) allowed the person's permit to lapse or had
4-51 the permit revoked under this chapter and did not make adequate
4-52 provision for the administration of the money deposited with the
4-53 person for prepaid funeral benefits contracts in accordance with
4-54 the contract and applicable law, including rules; and

4-55 (2) the person failed or refused to correct the
4-56 violation before the 31st day after the date the person received
4-57 written notice from the commissioner.

4-58 SECTION 13. Subchapter I, Chapter 154, Finance Code, is
4-59 amended by adding Sections 154.415 and 154.416 to read as follows:

4-60 Sec. 154.415. PROHIBITION ORDER. (a) The commissioner may
4-61 prohibit a person from participating in the business of prepaid
4-62 funeral benefits sales if the commissioner determines from
4-63 examination or other credible evidence that:

4-64 (1) the person:

4-65 (A) intentionally committed or participated in
4-66 the commission of an act described by Section 154.401;

4-67 (B) violated a final cease and desist order
4-68 issued by the department or another state agency related to the sale
4-69 of prepaid funeral benefits; or

5-1 (C) made, or caused to be made, false entries in
 5-2 the records of a prepaid funeral benefits seller;

5-3 (2) because of the action by the person described by
 5-4 Subdivision (1):

5-5 (A) the purchaser or seller of prepaid funeral
 5-6 benefits has suffered or will probably suffer financial loss or
 5-7 expense, or other damage;

5-8 (B) the interests of the purchaser have been or
 5-9 could be prejudiced; or

5-10 (C) the person has received financial gain or
 5-11 other benefit by reason of the action, or likely would have if the
 5-12 action had not been discovered; and

5-13 (3) the action involves personal dishonesty on the
 5-14 part of the person.

5-15 (b) If the commissioner has grounds for action under
 5-16 Subsection (a) and finds that a prohibition order appears to be
 5-17 necessary and in the best interest of the public, the commissioner
 5-18 may serve a proposed prohibition order on a person alleged to have
 5-19 committed or participated in the action. The proposed order must:

5-20 (1) be personally delivered or mailed by registered or
 5-21 certified mail, return receipt requested;

5-22 (2) state with reasonable certainty the grounds for
 5-23 prohibition;

5-24 (3) state the effective date of the order, which may
 5-25 not be before the 21st day after the date the proposed order is
 5-26 personally delivered or mailed; and

5-27 (4) state the duration of the order, including whether
 5-28 the duration is perpetual.

5-29 (c) The commissioner may make a prohibition order perpetual
 5-30 or effective for a specific period of time, may probate the order,
 5-31 or may impose other conditions on the order.

5-32 (d) The order takes effect if the person against whom the
 5-33 proposed order is directed does not request a hearing in writing
 5-34 before the effective date. If the person does not request a hearing
 5-35 before the effective date, the order is final and not appealable as
 5-36 to that person.

5-37 (e) If the person requests a hearing as provided by
 5-38 Subsection (d), the hearing must be conducted as provided by
 5-39 Chapter 2001, Government Code, and commission rules. After the
 5-40 hearing, the commissioner shall issue or decline to issue the
 5-41 proposed order. The proposed order may be modified as necessary to
 5-42 conform to the findings at the hearing.

5-43 (f) An order issued under Subsection (e) is immediately
 5-44 final for purposes of enforcement and appeal. The order may be
 5-45 appealed as provided by Sections 31.202, 31.203, and 31.204.

5-46 Sec. 154.416. APPLICATION FOR RELEASE FROM PROHIBITION
 5-47 ORDER. (a) After the expiration of 10 years from the date of
 5-48 issuance, a person who is subject to a prohibition order issued
 5-49 under Section 154.415, regardless of the order's stated duration or
 5-50 date of issuance, may apply to the commissioner to be released from
 5-51 the order.

5-52 (b) The application must be made under oath and in the form
 5-53 required by the commissioner. The application must be accompanied
 5-54 by any required fees.

5-55 (c) The commissioner, in the exercise of discretion, may
 5-56 approve or deny an application filed under this section.

5-57 (d) The commissioner's decision under Subsection (c) is
 5-58 final and not appealable.

5-59 SECTION 14. This Act takes effect September 1, 2013.

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