

FINANCE CODE

TITLE 3. FINANCIAL INSTITUTIONS AND BUSINESSES

SUBTITLE E. OTHER FINANCIAL BUSINESSES

CHAPTER 154. PREPAID FUNERAL SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 154.001. PURPOSE. The purposes of this chapter are to:

- (1) limit the manner in which a person may accept funds in prepayment of funeral services to be performed in the future;
- (2) provide a regulatory framework to give the public an opportunity to arrange and pay for funerals in advance of need; and
- (3) provide all safeguards to protect the prepaid funds and to assure that the funds will be available to pay for prearranged funeral services.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.002. DEFINITIONS. In this chapter:

- (1) "Cash advance item" has the meaning assigned by 16 C.F.R. Section 453.1.
- (1-a) "Commission" means the Finance Commission of Texas.
- (2) "Commissioner" means the banking commissioner of Texas.
- (3) "Department" means the Texas Department of Banking.
- (4) "Earnings" means the amount in an account in excess of the amount paid by the purchaser of a prepaid funeral benefits contract that is deposited in the account as provided by Section 154.253, including accrued interest, accrued income, and enhanced or increased value.
- (5) "Financial institution" has the meaning assigned by Section 201.101.
- (6) "Funeral provider" means the person designated in a prepaid funeral benefits contract that has agreed to provide the specified prepaid funeral benefits.

(6-a) "Insurance-funded contract" means an insurance-funded prepaid funeral benefits contract.

(7) "Insurance policy" means a life insurance policy or annuity contract.

(8) "Person" means an individual, firm, partnership, corporation, or association.

(9) "Prepaid funeral benefits" means prearranged or prepaid funeral or cemetery services or funeral merchandise, including an alternative container, casket, or outer burial container. The term does not include a grave, marker, monument, tombstone, crypt, niche, plot, or lawn crypt unless it is sold in contemplation of trade for a funeral service or funeral merchandise to which this chapter applies.

(10) "Seller" means a person selling, accepting money or premiums for, or soliciting contracts for prepaid funeral benefits or contracts or insurance policies to fund prepaid funeral benefits in this state.

(11) "Crypt," "grave," "lawn crypt," "niche," and "plot" have the meanings assigned by Section [711.001](#), Health and Safety Code.

(12) "Funeral merchandise" or "merchandise" means goods sold or offered for sale on a preneed basis directly to the public for use in connection with funeral services.

(13) "Funeral service" or "service" means a service sold or offered for sale on a preneed basis that may be used to:

(A) care for and prepare a deceased human body for burial, cremation, or other final disposition; and

(B) arrange, supervise, or conduct a funeral ceremony or the final disposition of a deceased human body.

(14) "Trust-funded contract" means a trust-funded prepaid funeral benefits contract.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.40(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 344, Sec. 2.023, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 867, Sec. 72, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. [3762](#)), Sec. 1, eff.

September 1, 2009.

Sec. 154.003. EFFECT ON INSURANCE LAWS. Except as provided by Section 154.004, this chapter does not affect the Insurance Code.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.004. GROUP INSURANCE CONTRACTS. (a) A life insurance company authorized to engage in the business of life insurance in this state may issue a group contract of decreasing term life insurance to persons who purchase prepaid funeral benefits from the same seller. The amount of life insurance for a purchaser must at all times approximate the future unpaid balance of the purchaser's contract for prepaid funeral benefits.

(b) A seller has an insurable interest in the life of the purchaser of a prepaid funeral benefits contract to the extent of any unpaid balance of the contract. The proceeds of a life insurance policy received by the seller on the life of the purchaser shall be applied to the unpaid balance.

(c) This section does not affect the funding of prepaid funeral benefits by other insurance contracts as provided by Subchapter E.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT

Sec. 154.051. ADMINISTRATION OF CHAPTER; FEES. (a) The department shall administer this chapter.

- (b) The commission may adopt reasonable rules concerning:
- (1) fees to defray the cost of administering this chapter;
 - (2) the keeping and inspection of records relating to the sale of prepaid funeral benefits;
 - (3) the filing of contracts and reports;
 - (4) changes in the management or control of an organization; and
 - (5) any other matter relating to the enforcement and

administration of this chapter.

(c) The department may not maintain unnecessary fund balances. Fee amounts must be set in accordance with this requirement.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 73, eff. Sept. 1, 2001.

Sec. 154.052. ANNUAL REPORT. (a) The department may require a permit holder that has outstanding contracts for prepaid funeral benefits to submit an annual report in the form required by rule of the commission.

(b) The department shall require a seller that discontinues the sale of prepaid funeral benefits but has outstanding contracts to submit an annual report until the contracts are fully discharged.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. [3762](#)), Sec. 2, eff. June 1, 2010.

Sec. 154.053. RECORDS; EXAMINATION. (a) A permit holder that has outstanding contracts for prepaid funeral benefits shall maintain records as required by rule of the commission.

(b) The department shall examine the records of each permit holder at least once every 18-month period, except that the department may examine a permit holder more frequently if:

(1) the permit holder:

(A) has received a uniform risk rating, under standards adopted by rule of the commission, that is less than satisfactory as a result of the permit holder's most recent examination; or

(B) is subject to a formal enforcement proceeding or order by the commissioner; or

(2) the commissioner determines in the exercise of discretion that additional examination is necessary to safeguard the interests of purchasers and beneficiaries and to efficiently enforce applicable law.

(c) The department may defer an examination under this section for not more than six months if the commissioner determines that deferment of the examination is necessary for the efficient enforcement of applicable law.

(d) Any record may be maintained and provided for examination in electronic format if the record is reliable and can be retrieved in a timely manner.

(e) The department, in consultation with the advisory committee established under Section 154.208, shall develop an examination manual that includes procedures intended to reduce the expense of examinations under this section to the department and the permit holders.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 3, eff. June 1, 2010.

Sec. 154.054. EXAMINATION FEE. (a) For each examination conducted under Section 154.053, the commissioner or the commissioner's agent shall impose on the seller a fee in an amount set by the commission under Section 154.051 and based on the seller's total outstanding contracts.

(b) The amount of the fee must be sufficient to cover:

(1) the cost of the examination, including:

(A) salary and travel expenses for department employees, including travel to and from the place where the records are kept; and

(B) any other expense necessarily incurred in conducting the examination;

(2) the equitable or proportionate cost of maintaining and operating the department; and

(3) the cost of enforcing this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 74, eff. Sept. 1, 2001.

Sec. 154.055. DISCLOSURE OF CERTAIN INFORMATION; CONFIDENTIALITY. (a) Information relating to the financial

condition of a seller obtained by the department directly or indirectly, through examination or otherwise, other than published statements, is confidential.

(b) The files and records of the department relating to the financial condition of a seller are confidential.

(c) The commissioner may disclose the information described by Subsection (a) or (b) to an agency, department, or instrumentality of this or another state or the United States if the commissioner considers disclosure to be in the best interest of the public and necessary or proper to enforce the laws of this or another state or the United States.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.056. PAYMENT OF RESTITUTION MONEY. The department shall pay money received under a restitution order to the injured party as ordered.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

SUBCHAPTER C. PERMITS

Sec. 154.101. PERMIT REQUIREMENT. A person must hold a permit issued under this subchapter to:

(1) sell prepaid funeral benefits, or accept money for prepaid funeral benefits, in this state under any contract; or

(2) solicit an individual's designation of prepaid funeral benefits to be provided out of a fund, investment, security, or contract, including a contract or policy of insurance authorized, and sold under a license issued, by the Texas Department of Insurance, to be created or purchased by that individual at the suggestion or solicitation of the seller.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.102. PERMIT APPLICATION; FEE. To obtain a permit to sell or continue to sell prepaid funeral benefits, a person must:

(1) be one of the following, if the person proposes to offer and sell prepaid funeral benefits contracts subject to Subchapter E:

(A) a funeral provider;

(B) an insurance company; or

(C) the insurance holding company for an insurance company if the insurance company does not have the authority under its domiciliary law to directly hold a permit issued under this chapter;

(2) be a funeral provider, if the person proposes to offer and sell prepaid funeral benefits contracts subject to Subchapter F;

(3) file an application for a permit with the department on a form prescribed by the department;

(4) pay a filing fee in an amount set by the commission under Section [154.051](#); and

(5) if applicable, pay extraordinary expenses required for out-of-state investigation of the person.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 75, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. [3762](#)), Sec. 4, eff. September 1, 2009.

Sec. 154.103. ISSUANCE OF PERMIT. (a) The commissioner may investigate an applicant before issuing an initial permit.

(b) The commissioner shall approve the application and issue a permit to the applicant if the commissioner finds that the business ability, experience, character, financial condition, and general fitness of the applicant warrant the public's confidence. The commissioner shall notify the applicant if the commissioner finds otherwise.

(c) The applicant on request is entitled to a hearing on the denial of the application, to be held not later than the 60th day after the date of the request.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.104. TERM OF PERMIT. (a) The commission by rule shall prescribe the term of a permit issued under this subchapter.

(b) If the commission prescribes the term of a permit issued

under this subchapter for a period other than one year, the commission shall prorate the fee required under this subchapter as necessary to reflect the term of the permit.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 76, eff. Sept. 1, 2001.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 19, eff. September 1, 2019.

Sec. 154.105. PROHIBITION ON TRANSFER OF PERMIT. A permit is not transferable.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

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

(c) If the commissioner denies the application, the applicant may 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.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 5, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 39, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. 297), Sec. 1, eff. September 1, 2013.

Sec. 154.107. REQUIRED RENEWAL FOR SELLERS. (a) A seller that has outstanding contracts shall renew the seller's permit until the contracts are fully discharged.

(b) A seller may 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) A seller must 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) A seller that holds a restricted permit may not sell prepaid funeral benefits during the period a restricted permit is in effect. 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.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. 297), Sec. 2, eff. September 1, 2013.

Sec. 154.108. RENEWAL FEE. The commission shall set the renewal fee under Section 154.051.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 77, eff. Sept. 1, 2001.

Sec. 154.109. GROUNDS FOR CANCELLATION OR SUSPENSION OF OR REFUSAL TO RENEW PERMIT. (a) The commissioner by order may cancel or suspend a permit if the commissioner finds, by examination or other credible evidence, that the permit holder:

(1) violated this chapter or another law of this state relating to the sale of prepaid funeral benefits, including a final order of the commissioner or rule of the commission;

(2) misrepresented or concealed a material fact in the permit application; or

(3) obtained, or attempted to obtain, the permit by misrepresentation, concealment, or fraud.

(b) The commissioner by order may refuse to renew a permit if the commissioner finds, by examination or other credible evidence, that the permit holder does not possess a qualification required by Section 154.103(b) for issuance of an initial permit, or that the permit holder:

(1) committed one or more of the acts described by Subsection (a); and

(2) did not correct the violation before the 31st day after the date of written notice from the commissioner.

(c) The commissioner may cancel the permit of a seller that fails to provide to the department evidence of payment of insurance premiums required by the department under Section 154.203 after the department by written notice requests the evidence.

(d) The commissioner may place on probation a permit holder whose permit is suspended. If a permit suspension is probated, the commissioner may require the permit holder:

(1) to report regularly to the department on matters that are the basis of the probation; or

(2) to limit its activities as prescribed by the commissioner.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 78, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 699, Sec. 5, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 6, eff. September 1, 2009.

Sec. 154.110. ORDER TO CANCEL, SUSPEND, OR REFUSE TO RENEW PERMIT. (a) An order issued under Section 154.109 must state:

(1) with reasonable certainty the grounds for the order; and

(2) the effective date, which may not be before the 16th day after the date the order is mailed.

(b) The order shall be served on the person named in the order by certified mail, return receipt requested, to the last known address of the person.

(c) The order takes effect as proposed unless the person named in the order requests a hearing not later than the 15th day after the date the order is mailed.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.111. SUCCESSOR PERMIT HOLDER. (a) The commission shall adopt rules governing the selection of a successor permit holder.

(b) A successor permit holder to whom the commissioner transfers a contract under Section 154.413 shall perform the contract and is entitled to retain the money that would have been due the person whose permit was canceled, including any money seized by the commissioner.

(c) Any premium received through the selection process that exceeds the claims against the prior permit holder shall be deposited in the fund maintained under Section 154.351.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 79, eff. Sept. 1, 2001.

SUBCHAPTER C-1. PRESALE DISCLOSURES

Sec. 154.131. BROCHURE. (a) A seller, directly or through the seller's designated agent, shall provide an informational brochure to each potential purchaser of a prepaid funeral benefits contract.

(b) The brochure must:

(1) describe the regulation of prepaid funeral benefits contracts and the trust and insurance funding options available under the law of this state; and

(2) include a reference to the Internet website required under Section [154.132](#).

(c) The department:

(1) must approve an informational brochure before the brochure may be used by the seller; and

(2) shall develop a model informational brochure that complies with this section with input from consumers, permit holders, insurers, and funeral providers.

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. [3762](#)), Sec. 7, eff. June 1, 2010.

Sec. 154.132. WEBSITE. (a) The department shall establish and maintain an Internet website that provides information to enable consumers to make informed decisions relating to the purchase of prepaid funeral benefits.

(b) The website:

(1) must include a description of the trust and insurance funding options available under the law of this state to be developed with input from consumers, permit holders, insurers, and funeral providers;

(2) may include links to and be linked from the department's website, the Texas Department of Insurance website, and the Texas Funeral Service Commission website; and

(3) may include additional information or links to additional information that the department determines may be helpful to consumers of prepaid funeral benefits in this state.

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. [3762](#)), Sec. 7,

eff. June 1, 2010.

Sec. 154.133. REFERENCE OR LINK TO WEBSITE. Any sales literature or a website that offers or promotes the sale of prepaid funeral benefits contracts to the public must include a reference or link to the Internet website required under Section [154.132](#).

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. [3762](#)), Sec. 7, eff. June 1, 2010.

SUBCHAPTER D. GENERAL PROVISIONS FOR SALES CONTRACTS

Sec. 154.151. FORM OF CONTRACT. (a) The department must approve a sales contract form for prepaid funeral benefits before the form is used.

(b) A sales contract for prepaid funeral benefits must:

(1) be in writing;

(2) state the name of the funeral provider or other person primarily responsible for providing the prepaid funeral benefits specified in the contract; and

(3) state the details of the prepaid funeral benefits to be provided, including a description and specifications of the material used in the caskets or grave vaults to be furnished.

(c) If a funeral provider designated in the contract to provide prepaid funeral benefits is not the seller licensed under this chapter, the funeral provider must:

(1) be a party to the contract;

(2) agree in the contract to provide those benefits; and

(3) by signing the contract, agree to discharge the responsibilities imposed on a funeral provider by Section [154.161](#).

(d) A sales contract for prepaid funeral benefits, whether in English or Spanish, must be written in plain language designed to be easily understood by the average consumer. The contract must be printed in an easily readable font and type size. The department shall provide model contracts complying with this subsection and shall enforce this subsection.

(e) The commission by rule shall establish a standard

disclosure that must be included in each contract to inform purchasers of the goods and services that will be provided or excluded under the contract and the circumstances under which the contract may be modified after death of the beneficiary. The commission by rule may prescribe a form for the standard disclosure that is designed to more closely conform to variations in sales contract forms that serve different purposes.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 699, Sec. 6, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. [3762](#)), Sec. 8, eff. September 1, 2009.

Sec. 154.1511. CASH ADVANCE ITEMS: NON-GUARANTEED MERCHANDISE AND SERVICES. (a) A purchaser of a prepaid funeral benefits contract may agree to advance funds for all or any portion of the estimated cost of cash advance items included in a prepaid funeral benefits contract, the actual cost of which are to be determined by existing prices at the time the items are delivered or provided in connection with at-need performance of the contracted funeral.

(b) Cash advance items included in a prepaid funeral benefits contract must be clearly grouped together and segregated from prepaid funeral benefits in a manner that will permit the average consumer to easily understand that:

(1) cash advance items are not fixed or guaranteed in price; and

(2) additional money may be required to fully pay for those items at the time of the funeral.

(c) A seller shall administer purchaser funds received in advance for cash advance items under a prepaid funeral benefits contract in the manner required by Section [154.159](#) or [154.203](#).

(d) After the death of the contract beneficiary, the funeral provider shall apply the proportionate part of the trust or insurance policy proceeds received under the contract that is derived from advance payment of cash advance items to the current purchase price for the items. To the extent the proportionate part

of contract proceeds:

(1) is less than the current purchase price for the cash advance items, the funeral provider may collect additional money for the difference in exchange for delivering or providing the items as part of the contracted funeral; or

(2) is greater than the current purchase price for the cash advance items, the funeral provider shall promptly refund the excess amount unless that amount is offset against other amounts due to the funeral provider in connection with the contracted funeral.

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 9, eff. September 1, 2009.

Sec. 154.152. REPRESENTATIONS REGARDING APPROVAL OF PERMIT HOLDER. A permit holder may represent that the department has approved or otherwise chosen a prepaid funeral vendor only with the following language: "The Texas Banking Department regulates the sale of prearranged funeral contracts" and "The form of this contract has been approved by the Department."

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.153. ALLOCATION OF SALES PRICE. A seller may not increase the sales price of an item not covered by this chapter to allocate a lesser sales price to an item covered by this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.154. AGREEMENT TO PAY FINANCE CHARGE. A purchaser of a prepaid funeral benefits contract may agree in writing to pay the seller a finance charge in accordance with Chapter 345 on an amount due the seller on the contract.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.155. CANCELLATION OF CONTRACT. (a) A purchaser of a prepaid funeral benefits contract may cancel the contract before maturity by giving written notice of cancellation to the seller on forms prescribed by the department. The seller shall maintain copies of the cancellation forms for examination by the department.

(b) Not later than the 30th day after the date of the cancellation notice, the seller of a trust-funded contract shall withdraw and pay to the purchaser money in the depository being held for the purchaser's use and benefit.

(c) The purchaser or seller may not make a partial cancellation or withdrawal.

(d) The purchaser of a trust-funded contract is entitled to receive the actual amount paid by the purchaser and half of all earnings attributable to that money, less the amount permitted to be retained as provided by Section 154.252, except as provided by Subsection (e) and by Sections 154.1511, 154.1551, and 154.254.

(e) A purchaser who cancels a contract on the solicitation of the seller is entitled to withdraw all money paid to the seller and all earnings attributable to that money. If the money is used to purchase a new prepaid funeral benefits contract under a solicitation by the seller, the new contract must protect the purchaser to an extent equal to or greater than that provided by the original contract, as determined by the department. Under the new contract, the cost to the purchaser of the same or substantially the same services or merchandise may not be greater than that provided by the canceled contract.

(f) The cancellation of an insurance-funded contract by the purchaser is subject to Section 154.205.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 699, Sec. 7, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 10, eff. September 1, 2009.

Sec. 154.1551. MODIFICATION AT TIME OF FUNERAL. (a) The funeral merchandise, funeral services, and cash advance items selected in a fully paid prepaid funeral benefits contract may be modified after the death of the beneficiary if the modification complies with this section or is otherwise agreed to in a writing signed by the seller or funeral provider and the person charged with the disposition of the beneficiary's remains by Section 711.002(a), Health and Safety Code, except that if the purchaser of the

contract is also the beneficiary:

(1) the contracted funeral merchandise and services may not be modified if the contract contains a clause that prohibits modification; and

(2) a modification may not change the type of disposition specified by the purchaser in the contract, whether by burial, cremation, or another alternative by which the purchaser's remains attain their final resting place, as provided by Section [711.002\(g\)](#), Health and Safety Code.

(b) The person charged with the disposition of the beneficiary's remains by Section [711.002\(a\)](#), Health and Safety Code, may make reasonable modifications to the funeral merchandise and services provided under a prepaid funeral contract at the time the funeral is performed, not to exceed 10 percent of the original purchase price of the contract. This subsection does not require the seller to:

(1) refund a portion of the funds attributable to the contract if the seller grants credit for surrender or exchange as provided by Subsection (a)(2);

(2) provide substituted or additional funeral merchandise or services in excess of credits granted under Subsection (a)(2) unless the seller receives additional compensation at current prices; or

(3) apply a portion of the funds attributable to the contract or credits granted under Subsection (a)(2) to another contract or funeral.

(c) The person charged with the disposition of the beneficiary's remains by Section [711.002\(a\)](#), Health and Safety Code, may not modify a prepaid funeral benefits contract that has not been fully paid at the time of death of the beneficiary except as agreed to in a writing signed by the seller and the person.

(d) A modification of contracted funeral merchandise or services must comply with Subsection (b), and the value attributed to any contracted funeral merchandise or service that is surrendered or exchanged in the modification must be computed on a comparable time-price basis with the price charged for substituted funeral merchandise or service provided as part of the

modification.

(e) A modification of cash advance items included in the contract under Section [154.1511](#) must comply with Subsection (f).

(f) A person charged with disposition of the beneficiary's remains may add, surrender, cancel, or modify any cash advance item included under the contract at the time the funeral is performed, provided that:

(1) the value attributed to any contracted funeral merchandise or service that is surrendered in a modification, determined as provided under Subsection (d), may be applied to the unpaid cost of contracted or additional cash advance items; and

(2) the funeral provider promptly refunds the proportionate part of the trust or insurance policy proceeds received under the contract that is derived from advance payment of a surrendered or canceled cash advance item to the extent the proceeds are not applied to the unpaid cost of additional cash advance items or additional funeral merchandise or services requested by the person charged with disposition of the beneficiary's remains.

Added by Acts 2001, 77th Leg., ch. 699, Sec. 8, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. [3762](#)), Sec. 11, eff. September 1, 2009.

Sec. 154.156. WAIVER OF RIGHT OF CANCELLATION. (a) The purchaser of a prepaid funeral benefits contract may irrevocably waive the purchaser's right to cancel the contract under Section [154.155](#). The waiver must be in a separate writing signed by the purchaser and the seller and must comply with the plain language requirements for the form of a sales contract under Section [154.151](#).

(b) A waiver made under this section does not affect:

(1) a right the purchaser has under the contract to change the beneficiary of the contract;

(2) the purchaser's right to cancel the contract under Section [154.413](#);

(3) an abandonment of the money paid by the purchaser

under the contract as provided by Subchapter G; or

(4) a modification to the contract as provided by Section [154.1551](#).

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 699, Sec. 9, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. [3762](#)), Sec. 12, eff. September 1, 2009.

Sec. 154.157. PERFORMANCE OF CONTRACT. Delivery of funeral merchandise before death is not performance, in whole or in part, of a prepaid funeral benefits contract entered into after July 15, 1963.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.158. ENFORCEMENT OF CONTRACT. A seller that violates Section [154.101](#) may not enforce a prepaid funeral benefits contract, but the purchaser or an heir or legal representative of the purchaser is entitled to recover:

(1) the amount paid to the seller under the contract; and

(2) the amount paid to a fund or for an investment, security, or contract, including a contract or policy of insurance authorized by the Texas Department of Insurance.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.159. ADMINISTRATION OF MONEY RECEIVED. Money received for prepaid funeral benefits shall be administered as prescribed by Section [154.155](#) and Subchapters E and F, as applicable.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.160. AGENT; DEPOSIT OF MONEY. (a) A seller shall designate one or more agents by name or title.

(b) The seller shall notify the department of:

(1) the designation not later than the 10th day after the date the seller becomes subject to this chapter; and

(2) any change in the designation not later than the 10th day after the date of the change.

(c) An agent designated under this section is:

(1) considered a fiduciary for purposes of Section [32.45](#), Penal Code; and

(2) responsible for the deposit of money collected under prepaid funeral benefits contracts.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. [3762](#)), Sec. 13, eff. September 1, 2009.

Sec. 154.161. RESPONSIBILITIES OF FUNERAL PROVIDER.

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

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

(2) after the death of the contract beneficiary:

(A) deliver the contracted funeral merchandise and services and cash advance items required under the contract, subject to Section [154.1551](#);

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

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

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

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

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

(B) promptly deliver the records that verify

contract performance to the seller, including the final at-need contract, the certificate of performance, and the reconciliations required under Subdivision (2);

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

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

(E) 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.

(b) The seller shall report to the department any discrepancy in a reconciliation required under Subsection (a)(2) that remains unresolved after a request for correction is made under Subsection (a)(3)(C).

(c) The trustee or insurance company may withhold payment to the funeral provider until each document the funeral provider is required to prepare and deliver to the seller, trustee, or insurance company is received, properly completed, and fully executed.

(d) The department may not request records or documentation from a funeral provider under Subsection (a)(3)(D) unless:

(1) the seller has notified the funeral provider of a discrepancy in a reconciliation and the discrepancy remains unresolved after a request for correction;

(2) the date of contract performance by the funeral provider is earlier than the third anniversary of the date of the initial request; and

(3) the department finds that:

(A) the amount of the discrepancy exceeds five percent of the total contract price; or

(B) sufficient discrepancies exist to indicate the presence of an inappropriate or unlawful pattern or practice of

contract performance and documentation by the funeral provider.

(e) The department may not request a seller to obtain records or documentation described by Subsection (a)(3)(D) from a funeral provider if the department would be prohibited from requesting the documentation directly from the funeral provider because of the prohibition under Subsection (d)(2).

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 14, eff. September 1, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. 297), Sec. 3, eff. September 1, 2013.

SUBCHAPTER E. INSURANCE-FUNDED PREPAID FUNERAL BENEFITS

Sec. 154.201. REQUIREMENTS FOR SOLICITATION OF INSURANCE-FUNDED BENEFITS. A seller may not solicit an individual's designation of prepaid funeral benefits to be paid from an insurance policy, unless the insurance policy meets the requirements of Section 154.2021.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 15, eff. September 1, 2009.

Sec. 154.202. EXECUTION OF CONTRACT IN CONJUNCTION WITH APPLICATION FOR POLICY. An insurance-funded prepaid funeral benefits contract must be executed in conjunction with the application for the issuance of the insurance policy.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.2021. REQUIREMENTS FOR INSURANCE POLICIES. (a) An insurance policy used to fund prepaid funeral benefits under this chapter must:

(1) be written on a form approved by the Texas Department of Insurance;

(2) be issued by an insurance company authorized by the Texas Department of Insurance to engage in the business of

insurance in this state; and

(3) contain the following statement on the cover page or otherwise within the policy or a rider to the policy: "This policy is issued to fund a prepaid funeral benefits contract subject to Chapter 154 of the Texas Finance Code. Cancellation of the prepaid funeral benefits contract does not automatically cancel this policy."

(b) The aggregate initial face value of one or more insurance policies issued to fund a prepaid funeral benefits contract may not exceed the total contract price by more than five percent unless the purchaser:

(1) receives a conspicuous written disclosure of the purpose and amount of the excess coverage and how the insurance benefit will be applied at contract maturity; and

(2) consents in writing to the purchase of the excess coverage.

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 16, eff. September 1, 2009.

Sec. 154.203. PAYMENT OF PREMIUMS. (a) The premiums for an insurance policy that funds prepaid funeral benefits may only be collected by a licensed insurance agent appointed by the insurance company issuing the policy and shall be paid to the insurance company in accordance with the agency agreement between the insurance company and the agent.

(b) Receipt of premiums by the agent of the insurance company is considered receipt of premiums by the insurance company for purposes of continuing the policy in force.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 17, eff. September 1, 2009.

Sec. 154.204. CONVERSION FROM TRUST-FUNDED PREPAID FUNERAL BENEFITS. (a) The department must approve a conversion from trust-funded prepaid funeral benefits to insurance-funded prepaid funeral benefits as safeguarding the rights and interests of the

individual who purchases the prepaid funeral benefits contract.

(b) Each contract holder shall be notified in writing of:

- (1) the terms of the proposed conversion; and
- (2) the holder's right to decline the conversion.

(c) An application for approval of a conversion from trust-funded prepaid funeral benefits to insurance-funded prepaid funeral benefits must be:

(1) filed with the department on forms prescribed by the department; and

(2) accompanied by a conversion application fee set by the department under Section [154.051](#).

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.205. CANCELLATION OF INSURANCE-FUNDED CONTRACT.

(a) A purchaser of an insurance-funded prepaid funeral benefits contract may cancel the contract before maturity by giving written notice of cancellation to the permit holder. The permit holder shall maintain copies of the written notice of cancellation until the third anniversary of the date of receipt of notice.

(b) Cancellation of the contract under Subsection (a) does not automatically cancel the insurance policy funding the prepaid funeral benefits contract. The insurance policy may be canceled in accordance with the terms and conditions of the policy in exchange for the policy's cash surrender value.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. [3762](#)), Sec. 18, eff. September 1, 2009.

Sec. 154.206. ASSIGNMENT OF RIGHT TO BENEFITS. (a) The purchaser of an insurance-funded contract may assign the purchaser's ownership of and rights to benefits under the insurance policy to the seller, the funeral provider, the trustee, or other person.

(b) An assignment to the seller, the funeral provider, or an affiliated trustee may not be made irrevocable unless:

- (1) the assignment is made solely to facilitate the

eligibility of the purchaser under Title XIX, Social Security Act (42 U.S.C. Section 1396 et seq.), or other law providing for a public assistance program; or

(2) the assignee is specifically prohibited from exercising any right under the policy except administration of the benefits.

(c) An assignee under this section is subject to a fiduciary duty to apply the insurance policy benefits as provided by the contract and this chapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 19, eff. September 1, 2009.

Sec. 154.207. RECEIPT OF BENEFITS PAYABLE UNDER POLICY. (a) A seller or funeral provider that has been assigned the benefits payable under an insurance policy funding prepaid funeral benefits may not receive payment of the benefits until:

(1) the beneficiary named in the contract dies;

(2) the funeral service is completed;

(3) the funeral provider has completed the provider's obligations under Section 154.161(a) with respect to the contract; and

(4) the insurance company is presented with:

(A) certification from the funeral provider attesting to matters required by Subdivisions (2) and (3); and

(B) other documents as required by the insurance company to process and pay the claim.

(b) The seller shall maintain copies of the documentation submitted to the insurance company and a copy of the death certificate for examination by the department.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 20, eff. September 1, 2009.

Sec. 154.208. ADVISORY COMMITTEE. (a) The commissioner

shall appoint an advisory committee to review and make recommendations regarding the technical procedures and processes employed by the department to regulate insurance-funded prepaid funeral benefits and monitor compliance of sellers of insurance-funded contracts under this chapter, including recommendations relating to:

(1) the relevance and usefulness of records that the department requires a seller to maintain for examination purposes;

(2) the existence and identification of any specific record that an insurance company is required to maintain and produce under the Insurance Code that could be substituted as a record that meets the objectives and requirements of the department under this chapter;

(3) the scope, efficiency, and effectiveness of examination procedures employed by the department to verify compliance with this chapter; and

(4) any other matter submitted to the committee by the commissioner.

(b) The advisory committee is composed of eight members appointed by the commissioner as follows:

(1) two representatives of the department;

(2) two representatives of funeral providers that actively sell and service insurance-funded contracts in this state; and

(3) four representatives of permit holders that actively sell insurance-funded contracts in this state, provided that representation should be reasonably balanced to include permit holders that sell for domestic insurance companies, foreign insurance companies, small insurance companies, and large insurance companies.

(c) At the request of the commissioner, the commissioner of insurance may appoint a representative of the Texas Department of Insurance to serve on the advisory committee.

(d) Not later than the 30th day after the date all of the initial appointments to the advisory committee have been made, the advisory committee shall meet and select a presiding officer. After the initial meeting, the advisory committee shall

meet as necessary at the call of the commissioner.

(e) A member of the advisory committee serves without compensation. If authorized by the commissioner, a member of the advisory committee is entitled to reimbursement for reasonable expenses incurred in attending committee meetings.

(f) A recommendation of the advisory committee does not supersede the regulatory authority of the commissioner or the rulemaking authority of the commission under this chapter. The commissioner shall notify the commission of each recommendation of the advisory committee and the reasons for the recommendation.

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 21, eff. September 1, 2009.

SUBCHAPTER F. TRUST-FUNDED PREPAID FUNERAL BENEFITS

Sec. 154.251. APPLICABILITY. (a) This subchapter applies only to money paid or collected on a trust-funded prepaid funeral benefits contract entered into after July 15, 1963.

(b) Money paid or collected on a prepaid funeral benefits contract entered into before July 15, 1963, shall be handled in accordance with the law in effect on the date the contract was entered into.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.252. RETENTION OF MONEY FOR EXPENSES. The seller of a trust-funded prepaid funeral benefits contract may retain for the seller's use and benefit an amount not to exceed one-half of all money collected or paid until the seller has received an amount equal to 10 percent of the total amount the purchaser agreed to pay under the contract.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 699, Sec. 10, eff. Sept. 1, 2001.

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

(1) 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

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

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.024, eff. Sept. 1, 1999.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. 297), Sec. 4, eff. September 1, 2013.

Sec. 154.254. AMOUNT PAYABLE ON CANCELLATION OF CONTRACT. A purchaser of a trust-funded prepaid funeral benefits contract who cancels the contract during the first year of the contract when payments required under the contract are current is entitled to receive, regardless of the amount held in trust, the greater of:

(1) 90 percent of the actual amount paid by the purchaser; or

(2) the amount deposited in trust with respect to the purchaser's contract.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.255. STANDARD OF DUTY OF DEPOSITORY. A depository described by Section 154.253(a)(1) shall be held to the standard of duty of a fiduciary in holding, investing, or disbursing the money.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 720 (H.B. 2393), Sec. 1, eff. September 1, 2007.

Sec. 154.256. STANDARD OF DUTY OF TRUSTEE. A trustee described by Section 154.253(a)(2) shall be held to the standard of duty of a trustee under the Texas Trust Code (Subtitle B, Title 9, Property Code), provided that the provisions of the Texas Trust Code may not be expanded, restricted, eliminated, or otherwise altered by the provisions of the trust instrument in a manner that is inconsistent with the purposes, terms, distribution requirements, and other circumstances of a trust established under this chapter. In administering assets held in a prepaid funeral benefits trust, a trustee shall consider the trust beneficiaries to include the following two classes of persons to the extent of any beneficial interest:

(1) funeral providers or other persons entitled to payment after delivering a contracted funeral for which funds have been deposited in trust; and

(2) purchasers of or beneficiaries designated in prepaid funeral benefits contracts for which funds have been deposited in trust who:

(A) are entitled to receive a contracted funeral;
or

(B) have the right to cancel a contract under Section 154.155 if not waived under Section 154.156.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 720 (H.B. 2393), Sec. 1, eff. September 1, 2007.

Sec. 154.257. INVESTMENT PLAN. (a) A permit holder or trustee, if the permit holder deposits the money with a financial institution as trustee, shall:

(1) adopt a written investment plan consistent with this section and Sections 154.256 and 154.258 that specifies the quality, maturity, and diversification of investments;

(2) at least annually, review the adequacy and implementation of the investment plan;

(3) maintain investment records covering each transaction; and

(4) maintain the investment plan in the principal offices of the permit holder and trustee.

(b) The permit holder shall provide the investment plan to the department with the filing of the permit holder's annual report.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.025, eff. Sept. 1, 1999.

Sec. 154.258. INVESTMENT AND MANAGEMENT OF TRUST ASSETS.

(a) The trustee of a prepaid funeral benefits trust shall invest and manage trust assets in accordance with the Uniform Prudent Investor Act (Chapter 117, Property Code), in a manner consistent with the requirements of this chapter and the purposes, terms, distribution requirements, and other circumstances of the trust.

(b) The commission may adopt reasonable rules to administer and clarify law regarding the investment and management of prepaid funeral benefits trust funds, provided that the rules are consistent with the Uniform Prudent Investor Act (Chapter 117, Property Code), the requirements of this chapter, and the purposes, terms, distribution requirements, and other circumstances of a prepaid funeral benefits trust, including rules to:

(1) define trust and investment terms;

(2) specify standards applicable to the written investment plan required by Section 154.257; and

(3) establish guidelines, rebuttable presumptions, or safe harbor provisions with respect to suitable investments and investment strategies for a prepaid funeral benefits trust.

(c) Repealed by Acts 2007, 80th Leg., R.S., Ch. 720, Sec. 4(1), eff. September 1, 2007.

(d) Repealed by Acts 2007, 80th Leg., R.S., Ch. 720, Sec. 4(1), eff. September 1, 2007.

(e) Repealed by Acts 2007, 80th Leg., R.S., Ch. 720, Sec. 4(1), eff. September 1, 2007.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 62, Sec. 7.41(a), eff. Sept. 1, 1999; Acts 1999, 76th Leg., ch. 344, Sec. 2.026, eff. Sept. 1, 1999; Acts

2001, 77th Leg., ch. 1420, Sec. 6.028, eff. Sept. 1, 2001.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 720 (H.B. 2393), Sec. 2, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 720 (H.B. 2393), Sec. 3, eff. September 1, 2007.

Acts 2007, 80th Leg., R.S., Ch. 720 (H.B. 2393), Sec. 4(1), eff. September 1, 2007.

Sec. 154.260. USE OF MONEY TO PURCHASE, LEASE, OR INVEST IN ASSET OWNED BY SELLER OR FUNERAL PROVIDER. (a) The depository of money under Section 154.253 must obtain the commissioner's prior written approval to use that money to purchase, lease, or invest in an asset owned by the seller or funeral provider or an affiliate of the seller or funeral provider.

(b) The commissioner by order may disapprove a transaction described by Subsection (a) on the ground that it would materially adversely affect the interests of the purchasers of prepaid funeral benefits contracts.

(c) The commissioner shall enter an order approving or disapproving the transaction not later than the 30th day after the date the commissioner receives written notification by the permit holder. The transaction is considered approved if the commissioner does not act within that period.

(d) The order takes effect as proposed unless the permit holder requests a hearing not later than the 10th day after the date of the order.

(e) In this section, "affiliate" means a person or entity directly or indirectly controlling, controlled by, or under common control with a permit holder or funeral provider.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.261. WITHDRAWAL OF EARNINGS TO PAY CERTAIN EXPENSES. (a) The seller of a trust-funded prepaid funeral benefits contract may withdraw money from earnings on an account described by Section 154.253 to pay:

(1) reasonable and necessary trustee's fees or

depository fees;

(2) the examination fee for one examination by the department each calendar year; or

(3) the expense of preparation of financial statements required by the department, including those financial statements required by the department instead of an examination.

(b) With the department's prior approval, the seller may withdraw money from earnings on an account to pay:

(1) any tax incurred because of the existence of the account; or

(2) an assessment under Subchapter H.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.262. WITHDRAWAL OF MONEY ON DEATH OF BENEFICIARY.

(a) The seller of a trust-funded prepaid funeral benefits contract may withdraw an amount equal to the original contract amount paid by the purchaser and the earnings attributable to the contract, less the amount retained under Section [154.252](#), after:

(1) the beneficiary named in the contract dies;

(2) the funeral service is completed;

(3) the funeral provider has completed the provider's obligations under Section [154.161](#)(a) with respect to the contract; and

(4) the depository is presented with:

(A) appropriate affidavits by an officer or agent of the seller on forms prescribed by the department, attesting to matters required by Subdivisions (2) and (3); and

(B) a certified copy of the death certificate.

(b) The seller shall maintain copies of the affidavits and death certificate for examination by the department.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. [3762](#)), Sec. 22, eff. September 1, 2009.

Sec. 154.263. WITHDRAWAL OF EARNINGS ATTRIBUTABLE TO CONTRACT. On the maturity date of a trust-funded prepaid funeral

benefits contract as provided by Section 154.262 and after the funeral provider has performed its obligations under the contract, or at the time of cancellation of the contract as provided by Section 154.155 or 154.254, the seller may withdraw from an account described by Section 154.253:

(1) the proportionate part of the earnings that the amount deposited under the contract bears to the total amount deposited from all unmatured contracts, less the amount of excess earnings that was withdrawn in accordance with prior law; or

(2) if the commissioner has determined that the records of the permit holder are adequate to allow this method to be exercised accurately, an amount equal to the actual earnings on individual matured contracts, less any properly allocated expenses permitted by this subchapter and less the amount of excess earnings that was withdrawn in accordance with prior law.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.264. ACCOUNTING RECORDS. A seller shall maintain accounting records showing the amount deposited or invested under this subchapter with respect to each contract.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.265. DEFAULT UNDER CERTAIN CONTRACTS. (a) Notwithstanding any other law, the purchaser of a trust-funded prepaid funeral benefits contract may not be considered in default under the contract if:

(1) the purchaser has paid at least 85 percent of the contract price; and

(2) the purchaser was unable to pay due to extenuating financial circumstances.

(b) A funeral provider is not required to provide funeral merchandise or services under a trust-funded prepaid funeral benefits contract unless any remaining balance, including any applicable finance charge, owed under the contract is paid before the funeral service or the funeral provider agrees in writing to another payment arrangement.

(c) This section does not affect a purchaser's right to

cancel a trust-funded prepaid funeral benefits contract.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 1, eff. September 1, 2009.

SUBCHAPTER G. ABANDONED CONTRACTS

Sec. 154.301. PRESUMPTION OF ABANDONMENT. (a) Money paid by a purchaser of a prepaid funeral benefits contract is personal property subject to presumption of abandonment and delivery to the comptroller under Title 6, Property Code. This subchapter controls in case of conflict with that title.

(b) Money paid by a purchaser of a prepaid funeral benefits contract and held in the name of the seller at a depository under Subchapter F is presumed abandoned if:

(1) the amount due the seller from the purchaser under the contract has been collected and:

(A) the seller has not known the existence and location of the purchaser or the beneficiary of the contract for the three preceding years;

(B) according to the knowledge and records of the seller, a claim to the money or contract has not been asserted or an act of ownership of the money or contract has not been exercised during the three preceding years;

(C) at least 60 years have elapsed since the date the purchaser executed the contract; and

(D) at least 90 years have elapsed since the date of birth of the beneficiary of the contract; or

(2) the amount due the seller from the purchaser under the contract has not been paid and during the three preceding years:

(A) the purchaser has not made a payment to the seller under the contract;

(B) the seller has not known the existence and location of the purchaser or the beneficiary of the contract; and

(C) according to the knowledge and records of the seller, a claim to the money or contract has not been asserted and an act of ownership of the money or contract has not been exercised.

(c) For purposes of Title 6, Property Code, the seller of

the contract for which money is presumed abandoned under Subsection (b) is the holder of the money, and the purchaser or the beneficiary of the contract is the owner of the money.

(d) The presumption of abandonment provided by Subsection (b) does not apply to:

(1) money retained by the seller to cover selling expenses, service costs, and general overhead, as provided by Section [154.252](#); and

(2) earnings attributable to money paid by the purchaser under the contract.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.302. NOTICE OF ABANDONED MONEY. On March 1 of each year, a seller that holds money presumed abandoned under Section [154.301](#)(b) shall furnish the commissioner with an acknowledged written notice of the abandoned money not later than the following June 1. The notice must include:

(1) the name and address, if known, of each person who appears to be the purchaser or the beneficiary of the contract;

(2) the identification number, if any, of the contract;

(3) the total amount paid on the contract;

(4) the amount paid on the contract and held at the depository;

(5) the earnings of the contract; and

(6) a statement by the seller recognizing the seller's obligation and intent to deliver the abandoned money to the comptroller in accordance with this subchapter.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 446 (S.B. [1822](#)), Sec. 1, eff. September 1, 2019.

Sec. 154.303. AUTHORIZATION TO WITHDRAW MONEY. (a) Not later than the 15th day after the date the notice required by Section [154.302](#) is received, the commissioner shall give the seller written authorization to:

(1) withdraw the money presumed abandoned as specified in the notice; and

(2) subject to Subsection (b), withdraw and retain the money specified in the notice that represents the earnings attributable to the abandoned money.

(b) The commissioner may refuse to authorize the seller to withdraw the earnings described by Subsection (a)(2) only if:

(1) the department has canceled or refused to renew the seller's permit to sell prepaid funeral benefits;

(2) the seller is the subject of a pending proceeding to cancel the seller's permit to sell prepaid funeral benefits; or

(3) the department has:

(A) determined from an examination of the seller's records that the seller has made withdrawals from accounts maintained by the seller that were not authorized under this chapter; and

(B) previously given written notice to the seller of that determination.

(c) Not later than the 15th day after the date the notice under Section 154.302 is received, the commissioner shall give written notice to the seller stating the reason the commissioner will not authorize the seller to withdraw the earnings described by Subsection (a)(2).

(d) A seller that did not receive the commissioner's authorization to withdraw earnings because of Subsection (b)(2) is entitled to withdraw and retain the earnings if the department or a court subsequently determines that the seller's permit should not be canceled.

(e) A seller that did not receive the commissioner's authorization to withdraw earnings because of Subsection (b)(3) is entitled to withdraw and retain the earnings on redepositing in the accounts the amount of the unauthorized withdrawals.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.304. DELIVERY TO COMPTROLLER OF ABANDONED MONEY AND REPORT. Not later than the first July 1 after the date a seller is required to furnish notice to the commissioner under Section

154.302, the seller shall deliver to the comptroller:

- (1) the abandoned money; and
- (2) the report required to be filed under Chapter 74,

Property Code.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 446 (S.B. 1822), Sec. 2, eff. September 1, 2019.

Sec. 154.305. DISCHARGE OF CONTRACTUAL OBLIGATIONS; INDEMNITY OF SELLER. (a) The delivery of abandoned money and reporting to the comptroller under Section 154.304:

- (1) relieves the seller of the obligations and liabilities under the prepaid funeral benefits contract;
- (2) cancels the prepaid funeral benefits contract; and
- (3) discharges the obligations and liabilities of and claims against the seller and funeral provider.

(b) A seller that delivers money to the comptroller under Section 154.304 shall be indemnified under Section 74.304, Property Code, for any claim that may be made with respect to the property. Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.306. LIABILITY AND OBLIGATIONS OF COMPTROLLER. (a) The comptroller is liable to the purchaser or beneficiary of a prepaid funeral benefits contract presumed abandoned under this subchapter only to the extent of money that is attributable to the contract and delivered to the comptroller.

(b) The comptroller is not obligated to perform the seller's duties under an abandoned prepaid funeral benefits contract.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.307. RECOURSE OF PURCHASER OR BENEFICIARY. A purchaser's or beneficiary's sole recourse after a seller has delivered abandoned money and reported to the comptroller under Section 154.304 is to file a claim with the comptroller as provided by Chapter 74, Property Code.

SUBCHAPTER H. GUARANTY FUND

Sec. 154.351. MAINTENANCE OF GUARANTY FUND. (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.

(b) Except as provided by Subsection (c), for purposes of claims and assessments, the department shall maintain separate accounts within the fund for trust-funded contracts and insurance-funded contracts.

(c) The advisory council under Section 154.355 may authorize borrowing between accounts to facilitate prompt and efficient resolution of claims against an account with an insufficient balance if:

(1) the indebted account is obligated to pay interest at a rate that will reasonably compensate the lending account for lost earnings;

(2) required or planned assessments for the benefit of the indebted account are pending and sufficient to repay the lending account; and

(3) assessments collected for the benefit of the indebted account are transferred to the lending account until the borrowed amount plus interest has been repaid.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 80, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 23, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 559 (H.B. 3004), Sec. 1, eff. June 17, 2011.

Sec. 154.352. ASSESSMENT ON SALES CONTRACTS. (a) The department shall assess and collect from a seller not more than \$1 for each unmaturing prepaid funeral benefits contract sold during

each calendar year and shall deposit the assessments in the fund.

(b) The department shall stop assessing the amounts required by Subsection (a) when the amount in the fund first reaches \$1 million.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.3525. ASSESSMENT ON INSURANCE-FUNDED CONTRACTS.

(a) The department shall assess and collect from a seller not more than \$1 for each insurance-funded contract sold during each calendar year and shall deposit the assessments in the insurance-funded contract account within the fund.

(b) The department shall stop assessing the amounts required by Subsection (a) when the amount in the insurance-funded contract account reaches \$1 million.

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 24, eff. September 1, 2009.

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

- (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 as trustee of money outside the state treasury.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 1999, 76th Leg., ch. 344, Sec. 2.027, eff. Sept. 1, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 559 (H.B. 3004), Sec. 2, eff. June 17, 2011.

Sec. 154.354. USE OF FUND EARNINGS. The department may use the earnings from the fund to operate and maintain the fund.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.355. ADVISORY COUNCIL.

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

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

(2) two representatives of the prepaid funeral industry appointed by the commission, one of whom represents trust-funded prepaid funeral benefits contract sellers and one of whom represents insurance-funded prepaid funeral benefits contract sellers; and

(3) one consumer representative appointed by the commission.

(b) The prepaid funeral industry and consumer representatives serve two-year terms and may not serve more than four terms.

(c) The commissioner shall render a final decision if there is a tie vote by members of the advisory council.

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

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

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

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

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

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 25, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 559 (H.B. 3004), Sec. 3, eff. June 17, 2011.

Sec. 154.3551. LIMIT ON LIABILITY. (a) A member of the advisory council is not personally liable for damages arising from the member's official act or omission under this subchapter unless the act or omission is corrupt or malicious.

(b) The attorney general shall defend an action brought against a member of the advisory council arising from an official act or omission under this subchapter, including an action instituted after the defendant's service with the advisory council has terminated.

(c) The attorney general is not required to defend a member of the advisory council against an action relating to:

(1) the disposition of a claim filed under this subchapter; or

(2) any issue other than the applicability or effect of the limitation on liability under this section.

(d) The commissioner on behalf of the fund, with the advice and consent of the advisory council, may contract with the attorney general under Chapter 771, Government Code, for legal services not covered by this section.

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 26, eff. September 1, 2009.

Sec. 154.356. ASSESSMENT ON OUTSTANDING TRUST-FUNDED CONTRACTS TO PAY CLAIMS. (a) To pay a claim against the fund when the balance of the trust-funded contract account is insufficient to pay that claim, the advisory council may assess each permit holder that has outstanding trust-funded contracts an amount based on the permit holder's proportionate share of the purchasers' deposits on all outstanding trust-funded contracts determined as of the end of the preceding calendar year.

(b) The assessments shall be deposited in the trust-funded contract account within the fund and administered by the department and the advisory council in accordance with commission rules.

(c) An assessment made under this section is in addition to

any assessment required by Section [154.352](#).

(d) A seller whose permit is revoked or surrendered remains liable for any unpaid assessment made before the date of the revocation or surrender.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 81, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. [3762](#)), Sec. 27, eff. September 1, 2009.

Sec. 154.3565. ASSESSMENT ON OUTSTANDING INSURANCE-FUNDED CONTRACTS TO PAY CLAIMS. (a) To pay a claim against the fund when the balance of the insurance-funded contract account is insufficient to pay that claim, the advisory council may assess each permit holder that has outstanding insurance-funded contracts an amount based on the permit holder's proportionate share of all outstanding insurance-funded contracts determined as of the end of the preceding calendar year.

(b) The assessments shall be deposited in the insurance-funded contract account within the fund and administered by the department and the advisory council in accordance with commission rules.

(c) An assessment made under this section is in addition to any assessment required by Section [154.3525](#).

(d) A seller whose permit is revoked or surrendered remains liable for any unpaid assessment made before the date of the revocation or surrender.

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. [3762](#)), Sec. 28, eff. September 1, 2009.

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

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 559 (H.B. [3004](#)), Sec. 4, eff.

June 17, 2011.

Sec. 154.358. CLAIMS AGAINST FUND. (a) The payment of a claim or expense from the fund is a matter of privilege and not of right, and a person does not have a vested right in the fund as a beneficiary or otherwise.

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

(1) a purchaser of a prepaid funeral benefits contract;

(2) a purchaser's estate;

(3) a permit holder or funeral provider who assumes or performs a contract; or

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

(c) An approved claim or expense relating to a trust-funded contract may be paid only from the fund's trust-funded contract account. An approved claim or expense relating to an insurance-funded contract may be paid only from the fund's insurance-funded contract account.

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. [3762](#)), Sec. 29, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 559 (H.B. [3004](#)), Sec. 5, eff. June 17, 2011.

Sec. 154.359. PERMISSIBLE USES OF FUND. (a) In addition to uses authorized by Section [154.354](#), the fund may be used to pay:

(1) a loss attributable to the failure or inability of a permit holder or funeral provider to perform its obligations under a prepaid funeral benefits contract;

(2) expenses of a plan to arrange for another permit holder or funeral provider to assume the obligations of the permit holder or funeral provider under a prepaid funeral benefits contract or a group of prepaid funeral benefits contracts if the commissioner finds, with the advice and consent of the advisory

council, that the plan is reasonable and in the best interests of the contract beneficiaries;

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

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

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

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

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

(b) The fund may not be required to pay any claimant an amount that exceeds the contractual obligations specified by the express written terms of the prepaid funeral benefits contract, including:

(1) a claim based on marketing materials;

(2) a claim based on side letters or other documents that do not comply with the requirements of this chapter;

(3) a claim based on misrepresentation of the benefits conferred by the contract or a funding insurance policy; or

(4) a claim for court costs, attorney's fees, penalties, or consequential or incidental damages.

(c) A claim may not be approved for a loss to the extent the claim is insured, bonded, or otherwise covered, protected, or reimbursed from other sources, including coverage provided by the Texas Life and Health Insurance Guaranty Association under Chapter [463](#), Insurance Code.

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. [3762](#)), Sec. 29, eff. September 1, 2009.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 14 (S.B. [567](#)), Sec. 11, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 559 (H.B. 3004), Sec. 6, eff. June 17, 2011.

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

- (1) the permit holder is not the funeral provider; and
- (2) there is an actual or anticipated failure or inability of the funeral provider to perform its obligations under the contract.

(a-1) A permit holder to which this section applies shall 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.

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

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

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

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

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

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

- (2) to the extent known, the circumstances underlying the default by the original funeral provider and any attempt by the

permit holder to address the default with the defaulting funeral provider;

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

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

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

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

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

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

(1) additional information;

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

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

Added by Acts 2011, 82nd Leg., R.S., Ch. 559 (H.B. 3004), Sec. 7, eff. June 17, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. 297), Sec. 5, eff. September 1, 2013.

Sec. 154.360. SUBROGATION. (a) A person receiving a benefit under this subchapter, including a payment of or on account of a contractual obligation or provision of substitute or alternative prepaid funeral benefits, is considered to have assigned to the fund the rights under, and any cause of action relating to, the prepaid funeral benefits contract to the extent of the benefit received. Notwithstanding this assignment by law, the commissioner may require a payee to execute a formal assignment of the person's rights and cause of action to the fund as a condition of receiving a right or benefit under this subchapter.

(b) The fund retains all common law rights of subrogation and any other equitable or legal remedy that would have been available to a recipient of benefits from the fund with respect to a prepaid funeral benefits contract.

(c) The commissioner, on behalf of the fund, may bring an action against any person and may employ and compensate a consultant, an agent, legal counsel, an accountant, or any other person the commissioner considers appropriate to collect a subrogated amount. Payment shall be made from the appropriate account within the fund for these services. Any recovery of a subrogated amount shall be deposited in the appropriate account within the fund.

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. 3762), Sec. 29, eff. September 1, 2009.

SUBCHAPTER I. CRIMINAL PENALTIES AND CIVIL REMEDIES

Sec. 154.400. INVESTIGATION AND SUBPOENA AUTHORITY.

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

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

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

(b) The commissioner may 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). The subpoena may require attendance and production at the department's offices in Austin, Texas, or at another place the commissioner designates.

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

(d) If a person refuses to obey a subpoena, a district court in Travis County or the county in which the subpoena was served, on

application by the commissioner, may issue an order requiring the person to appear before the commissioner and produce documents or give evidence regarding the matter under investigation.

(e) The commissioner may recover the reasonable costs incurred in connection with an investigation conducted under this section from the person who is the subject of the investigation if, after a hearing conducted as provided by Chapter 2001, Government Code, the trier of fact determines that the person violated this chapter or a rule adopted under this chapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. 297), Sec. 6, eff. September 1, 2013.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 446 (S.B. 1822), Sec. 3, eff. September 1, 2019.

Sec. 154.401. CRIMINAL PENALTY FOR CERTAIN VIOLATIONS OF CHAPTER. (a) Except as provided by Section 154.402, an officer, director, agent, or employee of a seller commits an offense if the person:

(1) makes or attempts to make a contract in violation of this chapter;

(2) refuses to allow an inspection of the seller's records relating to the sale of prepaid funeral benefits;

(3) engages in fraud, deception, misrepresentation, or another dishonest practice in the sale of a contract subject to this chapter; or

(4) otherwise violates this chapter.

(b) An offense under this section for which a penalty is not expressly provided by this subchapter is punishable by:

(1) a fine of not less than \$100 or more than \$500;

(2) confinement in the county jail for a term of not less than one month or more than six months; or

(3) both the fine and confinement.

(c) Each violation of this chapter is a separate offense and shall be prosecuted individually.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.402. CRIMINAL PENALTY RELATING TO DEPOSIT OR WITHDRAWAL OF MONEY. (a) A person commits an offense if the person:

(1) fails to deposit money in compliance with this chapter; or

(2) withdraws money in a manner inconsistent with this chapter.

(b) An offense under this section is punishable as if it were an offense under Section 32.45, Penal Code.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.403. CRIMINAL PENALTY FOR FAILURE TO FILE REPORT.

(a) An officer of a seller commits an offense if the officer fails or refuses to file an annual report required by Section 154.052 before the 31st day after the date the officer is notified by the department of the requirement.

(b) An offense under this section is a misdemeanor and is punishable as provided by Section 154.401.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.404. CRIMINAL PENALTY FOR FAILURE TO DELIVER MONEY TO DESIGNATED AGENT. (a) A seller or a person acting on behalf of a seller commits an offense if the seller or person:

(1) collects money under a prepaid funeral benefits contract; and

(2) fails to deliver the money to a designated agent of the seller before the 31st day after the date it is collected.

(b) An offense under this section is punishable as if it were an offense under Section 32.45, Penal Code.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.405. CRIMINAL PENALTY FOR AGENT'S FAILURE TO DEPOSIT CERTAIN MONEY. (a) A designated agent of a seller commits an offense if the agent fails to deposit money collected under a prepaid funeral benefits contract before the 31st day after the date it is received by the agent.

(b) It is an exception to the application of this section

that the failure to make a deposit is inadvertent and is corrected before the 11th day after the date the seller discovers the failure.

(c) An offense under this section is punishable as if it were an offense under Section 32.45, Penal Code.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.406. ADMINISTRATIVE PENALTY. (a) After notice and opportunity for hearing, the commissioner may impose an administrative penalty on a person who:

(1) violates this chapter or a final order of the commissioner or rule of the commission and does not correct the violation before the 31st day after the date the person receives written notice of the violation from the department; or

(2) engages in a pattern of violations, as determined by the commissioner.

(b) The amount of the penalty for each violation may not exceed \$1,000 for each day the violation occurs.

(c) In determining the amount of the penalty, the commissioner shall consider the seriousness of the violation, the person's history of violations, and the person's good faith in attempting to comply with this chapter.

(d) The imposition of a penalty under this section is subject to judicial review as a contested case under Chapter 2001, Government Code.

(e) The commissioner may collect the penalty in the same manner that a money judgment is enforced in district court.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 699, Sec. 11, eff. Sept. 1, 2001; Acts 2001, 77th Leg., ch. 867, Sec. 82, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 1276, Sec. 8.003, eff. Sept. 1, 2003.

Sec. 154.4061. PATTERN OF WILFUL DISREGARD. (a) If, after a hearing conducted as provided by Chapter 2001, Government Code, the trier of fact finds that a violation of this chapter or a rule of the Finance Commission of Texas establishes a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission, the trier of fact may recommend to the

commissioner that the maximum administrative penalty permitted under Section 154.406 be imposed on the person committing the violation or that the commissioner cancel or not renew the person's permit under this chapter.

(b) For the purposes of this section, violations corrected as provided by Section 154.406 may be included in determining whether a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission exists.

Added by Acts 2001, 77th Leg., ch. 699, Sec. 12, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. 297), Sec. 7, eff. September 1, 2013.

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

(1) this chapter; or

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

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 83, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. 297), Sec. 8, eff. September 1, 2013.

Sec. 154.408. CEASE AND DESIST ORDER. (a) The commissioner may issue a cease and desist order to a person if the commissioner finds by examination or other credible evidence that the person has violated a law of this state relating to the sale of prepaid funeral benefits, including a violation of this chapter or a final order of the commissioner or rule of the commission.

(b) The order must state:

(1) with reasonable certainty the grounds for the order; and

(2) the effective date of the order.

(c) The order shall be served on the person named in the

order by certified mail, return receipt requested, to the last known address of the person.

(d) Except as provided by Section [154.4081](#), the order takes effect as proposed, except that the order may not take effect before the 16th day after the date the order is mailed unless the person named in the order requests a hearing not later than the 15th day after the date the order is mailed.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997. Amended by Acts 2001, 77th Leg., ch. 867, Sec. 84, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. [3762](#)), Sec. 30, eff. September 1, 2009.

Sec. 154.4081. EMERGENCY ORDER. (a) The commissioner may issue an emergency order that takes effect immediately if the commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a prepaid funeral benefits contract.

(b) An emergency order remains in effect unless stayed by the commissioner.

(c) The person named in the order may request in writing an opportunity for a hearing to show that the emergency order should be stayed. The written request for a hearing must 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. On receipt of the request, the commissioner shall set a time for the hearing before the 22nd day after the date the commissioner received the request, unless extended at the request of the person named in the order.

(d) The hearing is an administrative hearing relating to the validity of findings that support immediate effect of the order.

Added by Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. [3762](#)), Sec. 31, eff. September 1, 2009.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. [297](#)), Sec. 9, eff. September 1, 2013.

Sec. 154.409. SUIT BY ATTORNEY GENERAL. (a) The department may notify the attorney general of a violation of this chapter.

(b) The attorney general shall 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.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. 297), Sec. 10, eff. September 1, 2013.

Sec. 154.410. QUO WARRANTO PROCEEDINGS. (a) The attorney general may institute a quo warranto proceeding in a district court of Travis County to forfeit the charter or the right to do business of a corporation an officer, director, agent, or employee of which refuses or fails to correct a violation of this chapter after the department or attorney general notifies the officer, director, agent, or employee of the violation.

(b) Thirty days is considered a sufficient period to correct the violation after notice from the department or attorney general.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.411. RESTITUTION. The commissioner may issue an order to a person requiring restitution if, after notice and opportunity for hearing, the commissioner finds that the person:

(1) failed to deposit money in accordance with Subchapter F; or

(2) misappropriated, converted, or illegally withheld or failed or refused to pay on demand money entrusted to the person that belongs to the beneficiary under a prepaid funeral benefits contract.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.412. SEIZURE OF PREPAID FUNERAL ACCOUNTS AND RECORDS. (a) The commissioner may issue an order to seize accounts in which prepaid funeral funds, including earnings, may be held and may issue an order to seize the records that relate to the

sale of prepaid funeral benefits if the commissioner finds, by examination or other credible evidence, that the person:

(1) failed to deposit or remit money in accordance with Subchapter E or F;

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

(3) refused to submit to examination by the department;

(4) was the subject of an order to cancel, suspend, or refuse to renew a permit; or

(5) does not hold a permit or transferred the ownership of its business to another person who does not hold a permit.

(b) An order shall be served on the person named in the order by certified mail, return receipt requested, to the last known address of the person.

(c) An order takes effect immediately, and remains in effect unless stayed by the commissioner, if the commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a prepaid funeral benefits contract. If such a threat does not exist, the order must state the effective date, which may not be before the 16th day after the date the order is mailed.

(c-1) An emergency order remains in effect unless stayed by the commissioner. The person named in the order may request in writing an opportunity for a hearing to show that the emergency order should be stayed. The written request for a hearing must 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. On receipt of the request, the commissioner shall set a time before the 22nd day after the date the commissioner received the request, unless extended at the request of the person named in the order. The hearing is an administrative hearing relating to the findings that support immediate effect of the order.

(d) A nonemergency order takes effect as proposed unless the person named in the order requests a hearing not later than the 15th day after the date the order is mailed.

(e) Premiums received on the disposition of a contract related to the seizure of prepaid funeral money shall be handled as provided by Sections [154.111](#) and [154.413](#).

(f) After the issuance of an order under this section, the commissioner may initiate an administrative claim for ancillary relief, including a claim for:

(1) costs incurred in the administration, transfer, or other disposition of the seized assets and records; or

(2) costs reasonably expected to be incurred in connection with the administration and performance of any outstanding prepaid funeral benefits contracts sold by a person subject to the order.

(g) The remedy provided by Subsection (f) is not exclusive and does not limit the commissioner's discretion to seek an additional remedy authorized under this subchapter.

(h) On certification by the commissioner, a record seized as provided by Subsection (a) or a record created by or filed with the department 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. The certified record or a certified copy of the record is prima facie evidence of the facts contained in the record. 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.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. [3762](#)), Sec. 32, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 1190 (H.B. [3762](#)), Sec. 33, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. [297](#)), Sec. 11, eff. September 1, 2013.

Sec. 154.413. NOTIFICATION OF PURCHASER. Not later than

the 30th day after the date prepaid funeral money is seized under Section 154.412, the commissioner may notify each known person who purchased prepaid funeral benefits under a contract from the permit holder whose permit is canceled. The notice must:

(1) include an explanation of the procedures under this chapter for canceling the contract and claiming money that may be due the person if the person elects to cancel;

(2) inform the person on continuing to make payments under the contract if the person elects to keep the contract in force; and

(3) inform the person that if the person elects to keep the contract in force the commissioner will transfer:

(A) responsibility to perform the contract to a responsible successor permit holder selected by the commissioner; or

(B) the seized money to the fund maintained under Section 154.351, subject to the claims process prescribed by rule under Subchapter H.

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Sec. 154.414. LIQUIDATION OF BUSINESS AND AFFAIRS OF PERSON FOLLOWING SEIZURE OF MONEY AND RECORDS. After an order issued under Section 154.412(a) becomes final and unappealable, the commissioner may petition a district court in Travis County or in the county in which a person required to hold a permit under this chapter resides 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 if:

(1) the person:

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

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

(C) allowed the person's permit to lapse or had the permit revoked under this chapter and did not make adequate

provision for the administration of the money deposited with the person for prepaid funeral benefits contracts in accordance with the contract and applicable law, including rules; and

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

Acts 1997, 75th Leg., ch. 1008, Sec. 1, eff. Sept. 1, 1997.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. 297), Sec. 12, eff. September 1, 2013.

Sec. 154.415. PROHIBITION ORDER. (a) The commissioner may 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;

(B) violated a final cease and desist order issued by the department 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) 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, the commissioner may serve a proposed prohibition order on a person alleged to have committed or participated in the action. The proposed order must:

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

(d) 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. If the person does not request a hearing before the effective date, the order is final and not appealable as to that person.

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

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. 297), Sec. 13, eff. September 1, 2013.

Amended by:

Acts 2019, 86th Leg., R.S., Ch. 20 (S.B. 614), Sec. 20, eff. September 1, 2019.

Sec. 154.416. APPLICATION FOR RELEASE FROM PROHIBITION ORDER. (a) After the expiration of 10 years from the date of

issuance, a person who is subject to a prohibition order issued under Section [154.415](#), regardless of the order's stated duration or date of issuance, may apply to the commissioner to be released from the order.

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

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

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

Added by Acts 2013, 83rd Leg., R.S., Ch. 39 (S.B. [297](#)), Sec. 13, eff. September 1, 2013.