

BILL ANALYSIS

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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Currently, prepaid funeral benefits contracts are regulated by three different regulatory departments in an overlapping system which often creates confusion and additional costs to the industry and consumers. Specifically, the Texas Department of Insurance regulates insurance companies and insurance agencies in their conduct of the business of insurance, in accordance with insurance statutes; the Texas Department of Banking regulates entities that hold permits to sell prepaid funerals, in accordance with Chapter 154 of the Finance Code; and the Texas Funeral Service Commission regulates funeral homes in their performance of funerals.

As proposed, S.B. 2493 amends current law relating to the regulation of prepaid funeral benefits and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Funeral Service Commission in SECTION 1 (Sections 651.702, 651.704, 651.710, 651.713, 651.716, 651.730, and 651.737, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Chapter 651, Occupations Code, by adding Subchapter O, as follows:

SUBCHAPTER O. PREPAID FUNERAL BENEFITS

Sec. 651.701. DEFINITIONS. Defines "contract beneficiary," "crypt," "grave," "lawn crypt," "niche," "plot," "financial institution," "funeral provider," "insurance policy," "permit holder," "prepaid," "prepaid funeral benefits," "prepaid funeral benefits contract," and "responsible person."

Sec. 651.702. ADMINISTRATION OF SUBCHAPTER. (a) Requires the Texas Funeral Service Commission (TFSC) to administer this subchapter.

(b) Authorizes TFSC to adopt reasonable rules concerning fees to defray the cost of administering this subchapter; the keeping of records relating to the sale of prepaid funeral benefits; the filing of contracts and reports; changes in the management or control of a permit holder; and any other matter relating to the enforcement and administration of this subchapter.

Sec. 651.703. ANNUAL REPORT. (a) Authorizes TFSC to require a permit holder with outstanding prepaid funeral benefits contracts to submit an annual report that specifies the number of prepaid funeral benefits contracts in force at the beginning of the calendar year and the sum of the total contract price of those contracts; the total number of new prepaid funeral benefits contracts issued during the calendar year and the sum of the total contract price of those contracts; the total number of prepaid funeral benefits contracts that have been performed during the calendar year and the sum of the total contract price of those contracts; the total number of prepaid funeral benefits contracts that terminated by cancellation during the calendar year and the sum of the total contract price of those contracts; and the total number of prepaid funeral benefits contracts outstanding at year-end, the sum of the total contract price of contracts in force, and the

total funding available for those contracts as either the amount of insurance in force or the amount of trust funds held for those contracts.

(b) Requires that the annual report include a certification by the permit holder that states that the insurance premiums received have been paid to the appropriate insurance company, or the funds that are held in trust have been received and administered, in accordance with applicable law.

Sec. 651.704. RECORDS; EXAMINATION. (a) Requires a permit holder that has outstanding prepaid funeral benefits contracts to maintain records as required by TFSC. Provides that the records are subject to examination by TFSC or its agent on a schedule to be determined by TFSC, but in no event more frequently than once every three years unless TFSC determines additional examination necessary for cause.

(b) Requires TFSC or its agent, as part of the examination, to be given access to records relating to prepaid funeral benefits contracts of each permit holder.

(c) Authorizes TFSC by rule, to delegate the examination of trust-funded permit holders to the Texas Department of Banking (TDB) and the examination of insurance-funded permit holders to the Texas Department of Insurance (TDI), including the allocation of any examination fees under Section 651.705.

Sec. 651.705. EXAMINATION FEE. (a) Authorizes TFSC, for each examination conducted under Section 651.704, to impose on the permit holder a fee in an amount set by TFSC.

(b) Requires that the amount of the fee be sufficient to cover the cost of the examination, including salary and travel expenses for TFSC employees, including travel to and from the place where the records are kept and any other expense necessarily incurred in conducting the examination.

Sec. 651.706. CONFIDENTIALITY; DISCLOSURE OF CERTAIN INFORMATION. (a) Provides that information relating to the financial condition of a permit holder obtained by TFSC directly or indirectly, through examination or otherwise, other than published statements, is confidential.

(b) Provides that the files and records of TFSC relating to the financial condition of a permit holder are confidential.

(c) Authorizes TFSC to disclose the information described by Subsection (a) or (b) to an agency, commission, or instrumentality of this or another state or the United States if TFSC 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.

Sec. 651.707. PERMIT REQUIREMENT. Prohibits a person from selling prepaid funeral benefits contracts in this state unless the person holds a permit issued under this subchapter.

Sec. 651.708. PERMIT APPLICATION; FEE. Requires a person, to obtain a permit to sell or continue to sell prepaid funeral benefits contracts, to file an application for a permit with TFSC on a form prescribed by TFSC; pay a filing fee in an amount set by TFSC under Section 651.702; and if applicable, pay extraordinary expenses required for out-of-state investigation of the person.

Sec. 651.709. ISSUANCE OF PERMIT. (a) Authorizes TFSC to investigate an applicant before issuing an initial permit.

(b) Requires TFSC to approve the application and issue a permit to the applicant if TFSC finds that the business ability, experience, character, financial condition,

and general fitness of the applicant warrant the public's confidence. Requires TFSC to notify the applicant if the executive director finds otherwise.

(c) Requires the applicant to demonstrate sufficient financial responsibility to administer all prepaid funeral benefits contracts to performance. Requires that sufficient financial responsibility be presumed if the permit holder has current net worth of \$100,000 or provides TFSC with a letter of credit or performance bond or guarantee from its parent company in the amount of \$100,000 in a form and from an issuer acceptable to TFSC.

(d) Requires TFSC to issue the permit within 60 days of receipt of a completed application or to provide the applicant with written notice of the denial of the application, including the reasons for denial. Entitles the applicant on request to a hearing on the denial of the application, to be held not later than the 30th day after the date of the request.

Sec. 651.710. TERM OF PERMIT. (a) Provides that a permit is issued for a five-year term.

(b) Authorizes TFSC by rule to adopt a system under which permits expire on various dates during the year.

Sec. 651.711. FUNDING OF PREPAID FUNERAL BENEFITS CONTRACTS. Authorizes a permit holder to elect to fund prepaid funeral benefits contracts with insurance policies under Section 651.729 or trust accounts under Section 651.730, or both.

Sec. 651.712. PROHIBITION ON TRANSFER OF PERMIT. Provides that a permit is not transferable without the prior approval of TFSC.

Sec. 651.713. TRANSFER OF BUSINESS OWNERSHIP. (a) Prohibits a person from acquiring in any manner an ownership interest in an entity that is a permit holder, unless the person has filed with TFSC under oath a biographical form for each person by whom or on whose behalf the acquisition is to be effected; a statement disclosing the substance of any disciplinary action taken by a financial or insurance regulator of this state, another state, or the United States against a person who is acquiring an ownership interest in the permit holder; a statement certifying that, immediately on the acquisition, the permit holder will be able to satisfy the requirements for the issuance of the permit; and any additional information that TFSC by rule may prescribe as necessary or appropriate to the protection of the consumers of this state or as in the public interest.

(b) Authorizes TFSC to require a partnership, syndicate, or other group that is required to file a statement under Subsection (a) to provide the information under that subsection for each partner of the partnership, each member of the syndicate, group, or limited liability company, and each person who controls the partner or member. Authorizes TFSC, if the partner, member, or person is a corporation or other entity or the person required to file the statement under Subsection (a) is a corporation, to require that the information required under that subsection be provided regarding the corporation or other entity; each individual who is an executive officer or director of the corporation; and each person who is directly or indirectly the beneficial owner of more than 10 percent of the outstanding voting securities of the corporation.

(c) Authorizes TFSC to disapprove an acquisition if, after notice and opportunity for hearing, TFSC determines that immediately on the acquisition, the permit holder would not be able to satisfy the requirements for the issuance of the permit; the competence, trustworthiness, experience, and integrity of the persons who would control the operation of the permit holder are such that it would not be in the interest of the consumers of this state to permit the acquisition; or the acquisition would violate this subchapter or another law of this state, another state, or the United States.

(d) Provides that, notwithstanding Subsection (c), an acquisition is considered approved if TFSC has not proposed to deny the requested change before the 61st day after the date TFSC receives all information required by this section.

(e) Provides that the requirements of this section do not apply to an acquisition of ownership, directly or indirectly, that is approved by TDI, TDB, or the insurance or banking regulator of any other state or the United States.

Sec. 651.714. **REQUIRED RENEWAL FOR CERTAIN PERMIT HOLDERS.** Requires a permit holder that has outstanding prepaid funeral benefits contracts to renew its permit.

Sec. 651.715. **RENEWAL FEE.** Requires TFSC to set the renewal fee under Section 651.702.

Sec. 651.716. **GROUND FOR CANCELLATION OR SUSPENSION OF OR REFUSAL TO RENEW PERMIT.** (a) Authorizes TFSC by order to cancel or suspend a permit if TFSC finds, by examination or other credible evidence, that the permit holder knowingly violated this subchapter or another law of this state relating to the sale of prepaid funeral benefits contracts, including a final order of TFSC or rule of TFSC; misrepresented or concealed a material fact in the permit application; obtained or attempted to obtain the permit by misrepresentation, concealment, or fraud; failed to maintain evidence of financial responsibility as required by Section 651.709(c); or failed to maintain the qualifications necessary to obtain a permit.

(b) Authorizes TFSC by order to refuse to renew a permit if TFSC finds, by examination or other credible evidence, that the permit holder committed one or more of the acts described by Subsection (a) and did not correct the violation before the 31st day after the date of written notice from TFSC.

(c) Authorizes TFSC to place on probation a permit holder whose permit is suspended. Authorizes TFSC, if a permit suspension is probated, to require the permit holder to report regularly to TFSC on matters that are the basis of the probation or to limit its activities as prescribed by TFSC.

Sec. 651.717. **ORDER TO CANCEL, SUSPEND, OR REFUSE TO RENEW PERMIT.**

(a) Requires that an order issued under Section 651.716 state with reasonable certainty the grounds for the order and the effective date, which may not be before the 16th day after the date the order is mailed.

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

(c) Provides that 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.

Sec. 651.718. **FORM OF CONTRACT.** (a) Requires TFSC to approve all prepaid funeral benefits contract forms before their use.

(b) Requires that a prepaid funeral benefits contract be in writing; state the name and address of the permit holder selling the prepaid funeral benefits contract; if the funeral provider is not the permit holder, state the name and address of the funeral provider responsible for providing the prepaid funeral benefits specified in the prepaid funeral benefits contract; and state the prepaid funeral benefits to be provided.

(c) Requires a funeral provider responsible for providing prepaid funeral benefits to be a party to the prepaid funeral benefits contract.

(d) Requires a prepaid funeral benefits contract, whether in English or Spanish, to be written in plain language designed to be easily understood by the average consumer. Requires that the contract be printed in an easily readable font and type size. Requires TFSC to adopt standards for prepaid funeral benefits contracts that comply with this subsection.

(e) Authorizes a permit holder to represent that TFSC has approved a prepaid funeral benefits contract with certain language.

(f) Prohibits the sales price of an item not covered by this subchapter from being increased to allocate a lesser sales price to an item covered by this subchapter.

(g) Authorizes a purchaser of a prepaid funeral benefits contract to agree in writing to pay the permit holder a finance charge in accordance with Chapter 345 (Retail Installment Sales), Finance Code, on any amount due the permit holder on the prepaid funeral benefits contract.

(h) Requires that a prepaid funeral benefits contract clearly identify the funeral merchandise and services for which the cost is guaranteed and those for which the cost is not guaranteed, the circumstances under which the guarantee is limited, and the circumstances under which the prepaid funeral benefits contract may be modified after the death of the contract beneficiary.

Sec. 651.719. CANCELLATION OF CONTRACT. (a) Authorizes a purchaser of a prepaid funeral benefits contract to cancel the contract before maturity by giving written notice of cancellation to the permit holder. Requires the permit holder to maintain copies of the written notice of cancellation for three years from the date of receipt.

(b) Provides that the cancellation of the prepaid funeral benefits contract does not cancel the insurance policy funding the prepaid funeral benefits contract. Authorizes the insurance policy to be canceled in accordance with the terms of the policy.

(c) Provides that the cancellation of the prepaid funeral benefits contract requires the return of trust funds under Section 651.730(e).

Sec. 651.720. MODIFICATION AT TIME OF FUNERAL. (a) Authorizes the funeral merchandise and services to be provided by the funeral provider under a prepaid funeral benefits contract to be modified after the death of the contract beneficiary if the modification complies with Subsection (b) or is otherwise agreed to in a writing signed by the funeral provider and the responsible person, except that if the purchaser of the prepaid funeral benefits contract is also the contract beneficiary, the contracted funeral merchandise and services are prohibited from being modified if the contract contains a clause that prohibits modification and a modification is prohibited from changing 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) (relating to a person providing written directions for certain services), Health and Safety Code, and the value attributed to any funeral merchandise or service for which the cost is guaranteed in the prepaid funeral benefits contract that is surrendered or exchanged in a 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.

(b) Authorizes the responsible person, except as limited by Subsection (a)(1) (relating to if the purchaser of the prepaid funeral benefits contract is also the contract beneficiary), to make reasonable modifications to the funeral merchandise and services provided under a prepaid funeral benefits contract at the time the funeral is performed, not to exceed 10 percent of the original purchase price of the contract. Provides that this subsection does not require the permit holder or the funeral provider to refund a portion of the funds attributable to the contract if the permit holder or funeral provider grants credit for surrender or

exchange as provided by Subsection (a)(2) (relating to modifying the contracted funeral merchandise and services); provide substituted or additional funeral merchandise or services in excess of credits granted under Subsection (a)(2) unless the permit holder or funeral provider receives additional compensation at current prices; or apply a portion of the funds attributable to the contract or credits granted under Subsection (a)(2) to another contract or funeral.

(c) Prohibits the responsible person from modifying a prepaid funeral benefits contract that has not been fully paid at the time of death of the contract beneficiary except as agreed to in a writing signed by the funeral provider and the responsible person.

Sec. 651.721. WAIVER OF RIGHT OF CANCELLATION. (a) Authorizes the purchaser of a prepaid funeral benefits contract to irrevocably waive the purchaser's right to cancel the contract under Section 651.719. Requires that the waiver be in a separate writing signed by the purchaser and the permit holder and may take effect no earlier than the 15th day after the date of the purchase of the contract. Requires that the form of the waiver comply with the requirements for the form of a sales contract under Section 651.718.

(b) Provides that a waiver made under this section does not affect any other right of the purchaser.

Sec. 651.722. PERFORMANCE OF CONTRACT. Provides that delivery of funeral merchandise before death is not performance, in whole or in part, of a prepaid funeral benefits contract.

Sec. 651.723. ENFORCEMENT OF CONTRACT. Prohibits a person that violates Section 651.707 from enforcing a prepaid funeral benefits contract, but provides that before performance, the purchaser or an heir or legal representative of the purchaser is entitled to recover if trust-funded, the amount paid under the contract or if insurance-funded, ownership of the insurance policy.

Sec. 651.724. AGENT OF PERMIT HOLDER. (a) Authorizes a permit holder to designate one or more agents to solicit and sell prepaid funeral benefits contracts under a written contract specifying the duties and obligations of the agents, including the proper receipt and deposit of any funds or the transmitting of any insurance policy premiums.

(b) Provides that the permit holder is responsible for the action or failure to act of any agent appointed under Subsection (a) in the course and scope of the agent's duty under the contract with the permit holder. Provides that the appointment of an agent does not diminish any obligation or responsibility of the permit holder imposed by the prepaid funeral benefits contract, this subchapter, or other law.

Sec. 651.725. TRUST-FUNDED PREPAID FUNERAL BENEFITS AGENT. (a) Authorizes a permit holder that elects to fund prepaid funeral benefits contracts with trust funds under Chapter 154 (Prepaid Funeral Services), Finance Code, to sell contracts only through trust-funded prepaid funeral benefits agents.

(b) Authorizes a permit holder to appoint funeral directors licensed by TFSC as trust-funded prepaid funeral benefits agents. Provides that licensed funeral directors are not subject to the requirements of Sections 651.726, 651.727, and 651.728.

Sec. 651.726. TRAINING AND EXAMINATION. Requires the permit holder to appoint an individual applicant to act as a trust-funded prepaid funeral benefits agent on its certification that the applicant has completed a course of study and instruction in compliance with this subchapter and passed without aid a written examination administered by the permit holder.

Sec. 651.727. COURSE. (a) Requires an applicant, to be eligible to receive an appointment under Section 651.725, to complete a course of study and instruction offered by a permit holder under this section.

(b) Requires that the course of study and instruction be at least five hours in duration, and include instruction on funeral merchandise and services, the responsibilities of a trustee, and the terms of the prepaid funeral benefits contract, and the laws relating to funeral prearrangement.

Sec. 651.728. EXAMINATION. (a) Requires TFSC to prescribe a uniform examination for applicants that fairly tests knowledge of the information contained in the course under Section 651.727.

(b) Requires TFSC to authorize a permit holder to administer the examination as provided by this section after approval by TFSC of a complete outline and explanation of the course and the manner of conducting the examination.

Sec. 651.729. INSURANCE-FUNDED PREPAID FUNERAL BENEFITS CONTRACTS. (a) Requires that the solicitation and sale of insurance policies to fund prepaid funeral benefits contracts, the terms of policies, all records relating to transactions, and the conduct of agents and insurers, except as specified in this section, be conducted in accordance with the Insurance Code and regulated solely by TDI.

(b) Authorizes insurance-funded prepaid funeral benefits contracts to be solicited and sold only by a permit holder, or its agent, who is properly licensed under Chapter 4054 (Life, Accident, and Health Agents), Insurance Code.

(c) Requires that the application for an insurance policy covering the contract beneficiary be executed simultaneously with the prepaid funeral benefits contract.

(d) Requires that the application include a disclosure in at least 10-point bold type, immediately above the signature line of the purchaser, that states "If you are applying for a life insurance policy with multiple payments, the total amount of premiums you pay over the life of the policy may exceed the death benefit."

(e) Requires that the application include the name and address of the insurer in a form required by TDI, and that the policy include a disclosure of the cash surrender value of the policy payable to the policy owner on cancellation of the insurance policy.

(f) Provides that the receipt of funds by the agent constitutes receipt of premium by the insurer subject to the terms of the policy.

(g) Requires that the insurance policy be on a form approved for use by TDI, and that the insurance policy provide the policy owner the opportunity to cancel the insurance policy and receive a full refund of any premium paid, for any reason, for a period of not less than 15 days after the date of delivery of the insurance policy. Provides that after expiration of that period, cancellation of the insurance policy is subject to the terms of the policy.

(h) Requires the insurer issuing the insurance policy to be licensed to do business in this state.

(i) Authorizes the purchaser of an insurance-funded prepaid funeral benefits contract to irrevocably assign the purchaser's ownership of or rights to benefits under the insurance policy to the permit holder, the funeral provider, or a trustee. Provides that an irrevocable assignment to a trustee is not valid unless it is made solely to facilitate the eligibility of the purchaser under Title XIX of the federal Social Security Act (42 U.S.C. Section 1396 et seq.) or other public assistance program or the trustee is specifically prohibited from exercising any right under the policy except administration of the benefits.

(j) Requires the insurer to pay the beneficiary or assignee of an insurance policy funding a prepaid funeral benefits contract on receipt of sufficient documentation, which may include a certification signed by the funeral provider and the responsible person that the funeral service has been performed in accordance with the prepaid funeral benefits contract and to the satisfaction of the responsible person, and a copy of the death certificate, or other documentation required by the insurer.

Sec. 651.730. TRUST-FUNDED PREPAID FUNERAL BENEFITS CONTRACTS.

(a) Provides that, except as specified in this section, the terms of trusts established for prepaid funeral benefits contracts, all records relating to transactions, and the conduct of agents and trustees are governed by Chapter 154, Finance Code, and regulated by the TDB or other regulators with jurisdiction over the trustee.

(b) Authorizes trust-funded prepaid funeral benefits contracts to be solicited and sold only by agents appointed by the permit holder on forms adopted by TFSC by rule.

(c) Requires the agent to provide the purchaser a disclosure in a form adopted by TFSC by rule that includes the amount retained by the permit holder, funeral provider, or agent from any funds received from the purchaser before deposit; the amount retained by the permit holder, funeral provider, or agent from any funds received from the purchaser on cancellation; the name, address, and contact person of the financial institution; a statement that the funds received will be invested in accordance with the Finance Code but that no return on funds is guaranteed; and a statement that should the contract beneficiary die before the prepaid funeral benefits contract is paid in full, the purchaser, the purchaser's authorized representative, or the responsible person may elect to pay the balance due and receive the prepaid funeral benefits under the contract.

(d) Requires that funds received for prepaid funeral benefits contracts be administered as prescribed by this section and Chapter 154, Finance Code, as applicable.

(e) Requires the permit holder, not later than the 30th day after the date of the receipt of a cancellation request, to withdraw and pay to the purchaser funds in the depository being held for the purchaser's use and benefit.

(f) Prohibits the purchaser or permit holder from making a partial cancellation or withdrawal.

(g) Entitles the purchaser on cancellation, to receive the actual amount paid by the purchaser and half of all earnings attributable to those funds, less the amount permitted to be retained as provided by Section 154.252 (Retention of Money For Expenses), Finance Code, except as provided by Subsections (h) and (i).

(h) Entitles a purchaser who cancels a contract on the solicitation of the permit holder or the funeral provider to receive the total amount paid to the permit holder or the funeral provider by the purchaser and all earnings attributable to those funds. Requires that the new contract, if the funds are used to purchase a new prepaid funeral benefits contract under a solicitation by the permit holder, protect the purchaser to an extent equal to or greater than that provided by the original contract, as determined by TFSC. Prohibits the cost to the purchaser of the same or substantially the same services or merchandise, under the new contract, from being greater than that provided by the canceled contract.

(i) Entitles a purchaser who cancels a contract during the first year of the contract when payments required under the contract are current to receive, regardless of the amount held in trust, the greater of 90 percent of the actual amount paid by

the purchaser or the amount deposited in trust with respect to the purchaser's contract.

Sec. 651.731. SEIZURE OF PREPAID FUNERAL TRUST FUNDS AND RECORDS.

(a) Authorizes the executive director of TFSC (executive director), after TFSC cancels or fails to renew a permit under Section 651.716(a) or (b) or on notice to a person required to obtain a permit under this subchapter, to issue an order to seize the prepaid funeral trust funds, including earnings, where those funds are held and is authorized to issue an order to seize the records that relate to the sale of prepaid funeral benefits if the executive director finds, by examination or other credible evidence, that the person failed to deposit or remit funds in accordance with Chapter 154, Finance Code; misappropriated, converted, or illegally withheld or failed or refused to pay on demand funds entrusted to the person that belong to the purchaser or contract beneficiary under a prepaid funeral benefits contract; refused to submit to examination by TFSC; was the subject of an order to cancel, suspend, or refuse to renew a permit; or does not hold a permit or transferred the ownership of its business to another person who does not hold a permit and who did not apply for a new permit before the 31st day after the date the transfer was completed or was denied a new permit.

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

(c) Provides that an order takes effect immediately if the executive director finds that immediate and irreparable harm is threatened to a contract beneficiary under a prepaid funeral benefits contract. Requires the order, if such a threat does not exist, to state the effective date, which is prohibited from being before the 16th day after the date the order is mailed.

(d) Provides that an 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) Requires that premiums received on the disposition of a contract related to the seizure of prepaid funeral trust funds be handled as provided by Section 651.732 and Subchapter H (Guaranty Fund), Chapter 154, Finance Code.

Sec. 651.732. NOTIFICATION TO PURCHASER. Requires the executive director, not later than the 30th day after the date prepaid funeral trust funds are seized under Section 651.731, to notify each known person who purchased prepaid funeral benefits under a contract from the permit holder whose permit is canceled. Requires that the notice include an explanation of the procedures under this subchapter for canceling the contract and claiming funds that may be due the person if the person elects to cancel; inform the person to continue to make payments under the contract if the person elects to keep the contract in force; and inform the person that if the person elects to keep the contract in force the executive director will transfer responsibility to perform the contract to a responsible successor permit holder selected by the executive director or the seized funds to the fund maintained under Section 154.351 (Maintenance of Guaranty Fund), Finance Code, subject to the claims process prescribed by rule under Subchapter H, Chapter 154, Finance Code.

Sec. 651.733. LIQUIDATION OF BUSINESS AND AFFAIRS OF PERSON FOLLOWING SEIZURE OF TRUST FUNDS AND RECORDS. Authorizes the executive director, after an order issued under Section 651.731(a) becomes final and unappealable, to petition the district court in the county in which a person required to hold a permit under this subchapter 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 the person failed or refused to correct the violation before the 31st day after the date the person received written notice from the executive director.

Sec. 651.734. PENALTIES FOR VIOLATIONS OF SUBCHAPTER. (a) Provides that a person commits an offense if the person fails to deposit funds in compliance with this subchapter unless the failure to make a deposit is inadvertent and is corrected before the 11th day after the date the permit holder discovers the failure, or withdraws funds in a manner inconsistent with this subchapter unless the withdrawal was made in error and the withdrawal is reversed before the 11th day after the date the permit holder discovers the error.

(b) Provides that an offense under this section is punishable as if it were an offense under Section 32.45 (Misapplication of Fiduciary Property or Property of Financial Institution), Penal Code.

Sec. 651.735. ADMINISTRATIVE PENALTY. (a) Authorizes the executive director, after notice and opportunity for hearing, to impose an administrative penalty on a person who violates this subchapter or a final order of TFSC or rule of TFSC and does not correct the violation before the 31st day after the date the person receives written notice of the violation from TFSC or engages in a pattern of violations, as determined by the executive director.

(b) Prohibits the amount of the penalty for each violation from exceeding \$1,000 for each day the violation occurs.

(c) Requires the executive director, in determining the amount of the penalty, to consider the seriousness of the violation, the person's history of violations, and the person's good faith in attempting to comply with this subchapter.

(d) Provides that the imposition of a penalty under this section is subject to the procedures of Subchapter L (Administrative Penalties) and subject to judicial review as a contested case under Chapter 2001 (Administrative Hearing), Government Code.

Sec. 651.736. RESTITUTION. Authorizes TFSC to issue an order to a person requiring restitution if, after notice and opportunity for hearing, TFSC finds that the person failed to deposit funds in accordance with Subchapter F (Trust-Funded Prepaid Funeral Benefits), Chapter 154, Finance Code, or misappropriated, converted, or illegally withheld or failed or refused to pay on demand funds entrusted to the person that belong to the contract beneficiary under a prepaid funeral benefits contract.

Sec. 651.737. DELIVERY AT NEED. (a) Requires a funeral provider responsible for the delivery of prepaid funeral benefits to provide the responsible person, at the time of delivery of prepaid funeral benefits, with a written reconciliation on a form adopted by TFSC by rule.

(b) Requires that the reconciliation provide complete, item-by-item details of the provider's resolution of the funeral costs with the responsible person, including prices and any guarantees, guarantee limitations, nonguaranteed items, and balance due.

(c) Requires the funeral provider to maintain a fully executed copy of each reconciliation until the next examination by TFSC under Section 651.704.

SECTION 2. Amends Section 154.002(10), Finance Code, to redefine "seller."

SECTION 3. Repealer: Section 154.002(7) (relating to the definition of "insurance policy"), Finance Code.

Repealer: Subchapters B (Powers and Duties of Department), C (Permits), D (General Provision for Sales Contracts), and I (Criminal Penalties and Civil Remedies), Chapter 154, Finance Code;

Repealer: Section 154.201 (Requirements for Solicitation of Benefits), Finance Code;

Repealer: Section 154.202 (Execution of Contract in Conjunction with Application for Policy), Finance Code;

Repealer: Section 154.203 (Payment of Premiums), Finance Code;

Repealer: Section 154.205 (Amount Payable on Cancellation of Contract), Finance Code;

Repealer: Section 154.206 (Assignment of Right to Benefits), Finance Code;

Repealer: Section 154.207 (Withdrawal of Benefits Payable Under Policy), Finance Code; and

Repealer: Sections 651.159 (Memorandum of Understanding: Prepaid Funeral Services) and 651.160 (Memorandum of Understanding: Funeral Establishment Requirements), Occupations Code.

SECTION 4. Requires a person holding a permit issued by TDB to sell prepaid funeral benefits on the effective date of this Act to be issued a permit by the TFSC without application, effective September 1, 2009. Provides that all provisions of this Act apply to the permit holder on and after the effective date of this Act, except that the permit holder has until the third anniversary of the effective date of this Act to meet the financial responsibility requirements of Section 651.709(c), Occupations Code, as added by this Act.

SECTION 5. Effective date: September 1, 2009.