

BILL ANALYSIS

Senate Research Center
81R23919 CLG-F

C.S.S.B. 2493
By: Deuell
Business & Commerce
5/4/2009
Committee Report (Substituted)

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.

C.S.S.B. 2493 amends current law relating to the regulation of prepaid funeral benefits.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas (commission) in SECTION 2 (Section 154.052, Finance Code), SECTION 3 (Section 154.053, Finance Code), SECTION 8 (Section 154.151, Finance Code), and SECTION 28 (Section 154.3565, Finance Code) of this bill.

Rulemaking authority previously granted to the commission is modified in SECTION 23 (Section 154.351, Finance Code) and SECTION 27 (Section 154.356, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 154.002, Finance Code, by amending Subdivisions (1) and (6) and adding Subdivisions (1-a), (6-a), and (14), to define "cash advance item," "commission," "insurance-funded contract," and "trust-funded contract" and to redefine "funeral provider."

SECTION 2. Amends Section 154.052(a), Finance Code, to authorize the Texas Department of Banking (TDB) to require a permit holder that has outstanding contracts for prepaid funeral benefits (benefits) to submit an annual report in the form required by rule of the Finance Commission of Texas (commission), rather than required by TDB.

SECTION 3. Amends Section 154.053, Finance Code, as follows:

Sec. 154.053. RECORDS; EXAMINATION. (a) Requires a permit holder that has outstanding contracts for benefits to maintain the records as required by rule of the commission, rather than requiring a seller that has outstanding contracts for benefits to maintain in this state any record required by TDB to determine whether the seller is complying with this chapter and providing that the record is subject to annual examination by TDB or its agent and to additional examinations TDB considers necessary. Deletes existing Subsections (b) (relating to authorization of TDB to examine or audit a record as necessary) and (c) (relating to requirement of TDB to be given access to any necessary records as part of the examination).

(b) Requires TDB to examine the records of each permit holder at least once every 18-month period, except that TDB is authorized to examine a permit holder more frequently for certain reasons.

(c) Authorizes TDB to defer an examination under this section for not more than six months if the banking commissioner of Texas (commissioner) determines that

deferment of the examination is necessary for the efficient enforcement of applicable law.

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

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

SECTION 4. Amends Section 154.102, Finance Code, as follows:

Sec. 154.102. PERMIT APPLICATION; FEE. Requires a person, to obtain a permit to sell or continue to sell benefits, to meet certain requirements, including that the person be a certain provider, if the person proposes to offer and sell benefits contracts subject to Subchapter E (Insurance-Funded Prepaid Funeral Benefits) and be a funeral provider, if the person proposes to offer and sell benefits contracts subject to Subchapter F (Trust-Funded Prepaid Funeral Benefits). Makes nonsubstantive changes.

SECTION 5. Amends Sections 154.106(a) and (b), Finance Code, as follows:

(a) Requires a permit holder to notify TDB and either the depository of the money held under Subchapter F or the issuer of insurance policy funding contracts under Subchapter E of a contract to transfer ownership of the permit holder's business not later than the seventh day after the date the contract is executed, rather than requiring a permit holder to notify by registered mail TDB and the depository of the money held under Subchapter F of a transfer in the ownership of the permit holder's business not later than the seventh day after the date the transfer is completed.

(b) Requires the proposed transferee, if the proposed transferee is not a permit holder, to file an application for a permit with TDB in accordance with this subchapter. Requires the commissioner, if the application is complete, to approve or deny the application before the 16th day after the date the application was received. Prohibits the transfer of benefits contracts of the permit holder that is the transferor from occurring until after the date a permit is issued to the applicant that is the transferee. Deletes existing text requiring the person, if the transfer is to a person who is not a permit holder, to file an application for a permit with TDB in accordance with this subchapter not later than the 30th day after the date the transfer is completed.

SECTION 6. Amends Section 154.109(b), Finance Code, to authorize the commissioner by order to 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) (relating to requirement of commissioner to approve the application and issue a permit for certain reasons) for issuance of an initial permit, or that the permit holder performed certain violations.

SECTION 7. Amends Chapter 154, Finance Code, by adding Subchapter C-1, as follows:

SUBCHAPTER C-1. PRESALE DISCLOSURES

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

(b) Sets forth the required content of the brochure.

(c) Requires TDB to approve an informational brochure before the brochure may be used by the seller and develop a model informational brochure that complies with this section with input from consumers, permit holders, insurers, and funeral providers.

Sec. 154.132. WEBSITE. (a) Requires TDB to establish and maintain an Internet website that provides information to enable consumers to make informed decisions relating to the purchase of benefits.

(b) Provides that the website is required to 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; is authorized to include links to and be linked from TDB's website, the Texas Department of Insurance (TDI) website, and the Texas Funeral Service Commission website; and is authorized to include additional information or links to additional information that TDB determines may be helpful to consumers of benefits in this state.

Sec. 154.133. REFERENCE OR LINK TO WEBSITE. Requires that any sales literature or a website that offers or promotes the sale of benefits contracts to the public include a reference or link to the Internet website required under Section 154.132.

SECTION 8. Amends Sections 154.151(c) and (e), Finance Code, as follows:

(c) Requires the funeral provider, if a funeral provider designated in the contract to provide benefits is not the seller licensed under this chapter, rather than requires a funeral provider designated in the contract to provide benefits that are not sold by the funeral provider, to be a party to the contract, agree in the contract to provide those benefits, and by signing the contract, agree to discharge the responsibilities imposed on a funeral provider by Section 154.161.

(e) Authorizes the commission by rule to prescribe a form for the standard disclosure that is designed to more closely conform to variations in sales contract forms that serve different purposes. Makes a nonsubstantive change.

SECTION 9. Amends Subchapter D, Chapter 154, Finance Code, by adding Section 154.1511, as follows:

Sec. 154.1511. CASH ADVANCE ITEMS: NON-GUARANTEED MERCHANDISE AND SERVICES. (a) Authorizes a purchaser of a benefits contract to agree to advance funds for all or any portion of the estimated cost of cash advance items included in a 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) Requires that cash advance items included in a benefits contract be clearly grouped together and segregated from benefits in a manner that will permit the average consumer to easily understand that cash advance items are not fixed or guaranteed in price and additional money may be required to fully pay for those items at the time of the funeral.

(c) Requires a seller to administer purchaser funds received in advance for cash advance items under a benefits contract in the manner required by Section 154.159 (Administration of Money Received) or 154.203.

(d) Requires the funeral provider, after the death of the contract beneficiary, to 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. Provides that 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 is authorized to 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 is required to promptly refund the excess amount unless that amount is offset against other amounts due to the funeral provider in connection with the contracted funeral.

SECTION 10. Amends Section 154.155, Finance Code, by amending Subsections (b) and (d) and adding Subsection (f), as follows:

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

(d) Entitles the purchaser of a trust-funded contract 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 (Retention of Money for Expenses), except as provided by Subsection (e) (relating to entitlement of purchaser to withdraw money) and by Sections 154.1511, 154.1551, and 154.254 (Amount Payable on Cancellation of Contract), rather than Sections 154.205 and 154.254.

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

SECTION 11. Amends Section 154.1551, Finance Code, by amending Subsection (a) and adding Subsections (d)-(f), as follows:

(a) Authorizes the funeral merchandise, funeral services, and cash advance items selected in, rather than the funeral merchandise and services to be provided by the seller under, a fully paid benefits contract to be modified after the death of the beneficiary if the modification complies with this section, rather than Subsection (b), 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) (relating to the priority of persons who have a right to control the disposition), Health and Safety Code, except that if the purchaser of the contract is also the beneficiary, certain prohibitions apply. Deletes existing text requiring that the value attributed to any contracted funeral merchandise or service that is surrendered or exchanged in a modification be computed on a comparable time-price basis with the price charged for substituted funeral merchandise or service provided as part of the modification. Makes nonsubstantive changes.

(d) Requires that a modification of contracted funeral merchandise or services comply with Subsection (b) (relating to authorization of the person charged with the disposition of the remains to make reasonable modifications), and requires that the value attributed to any contracted funeral merchandise or service that is surrendered or exchanged in the modification 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) Requires that a modification of cash advance items included in the contract under Section 154.1511 comply with Subsection (f).

(f) Authorizes a person charged with disposition of the beneficiary's remains to add, surrender, cancel, or modify any cash advance item included under the contract at the time the funeral is performed for certain reasons.

SECTION 12. Amends Section 154.156(a), Finance Code, to require that the waiver of the purchaser of a benefits contract be in a separate writing signed by the purchaser and the seller and comply with the plain language requirements for the form of a sales contract under Section 154.151. Deletes existing text requiring that the waiver be in a separate writing signed by the purchaser and the seller and not earlier than the 15th day after the date of the purchase of the contract. Makes a nonsubstantive change.

SECTION 13. Amends Section 154.160(b), Finance Code, to require the seller to notify TDB of any change in the designation not later than the 10th day after, rather than within the 10-day period preceding, the date of the change.

SECTION 14. Amends Subchapter D, Chapter 154, Finance Code, by adding Section 154.161, as follows:

Sec. 154.161. **RESPONSIBILITIES OF FUNERAL PROVIDER.** (a) Requires the funeral provider under a benefits contract subject to this chapter to perform certain actions.

(b) Requires the seller to report to TDB any discrepancy in a reconciliation required under Subsection (a)(2) (relating to after the death of the contract beneficiary) that remains unresolved after a request for correction is made under Subsection (a)(3)(C) (relating to correcting or explaining any discrepancy in a reconciliation if requested by the seller).

(c) Authorizes the trustee or insurance company to 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) Prohibits TDB from requesting records or documentation from a funeral provider under Subsection (a)(3)(D) (relating to providing copies of any other records or documentation related to the contract) unless the seller has notified the funeral provider of a discrepancy in a reconciliation and the discrepancy remains unresolved after a request for correction; the date of contract performance by the funeral provider is earlier than the third anniversary of the date of the initial request; and TDB finds that the amount of the discrepancy exceeds five percent of the total contract price or 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) Prohibits TDB from requesting a seller to obtain records or documentation described by Subsection (a)(3)(D) from a funeral provider if TDB would be prohibited from requesting the documentation directly from the funeral provider because of the prohibition under Subsection (d)(2) (relating to the date of contract performance by the funeral provider is earlier than the third anniversary of the date of the initial request).

SECTION 15. Amends Section 154.201, Finance Code, as follows:

Sec. 154.201. New heading: **REQUIREMENTS FOR SOLICITATION OF INSURANCE-FUNDED BENEFITS.** Prohibits a seller from soliciting an individual's designation of benefits to be paid from an insurance policy, unless the insurance policy meets the requirements of Section 154.2021. Deletes existing text prohibiting a seller from soliciting an individual's designation of benefits to be paid from a fund, investment, security, or contract, including an insurance policy, to be created or purchased by or for that individual at the suggestion or solicitation of the seller unless for certain reasons.

SECTION 16. Amends Subchapter E, Chapter 154, Finance Code, by adding Section 154.2021, as follows:

Sec. 154.2021. **REQUIREMENTS FOR INSURANCE BENEFITS.** (a) Sets forth certain requirements for an insurance policy used to fund benefits under this chapter.

(b) Prohibits the aggregate initial face value of one or more insurance policies issued to fund a benefits contract from exceeding the total contract price by more than five percent unless the purchaser 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 consents in writing to the purchase of the excess coverage.

SECTION 17. Amends Section 154.203, Finance Code, as follows:

Sec. 154.203. PAYMENT OF PREMIUMS. (a) Authorizes the premiums for an insurance policy that funds benefits to only be collected by a licensed insurance agent appointed by the insurance company issuing the policy and is required to be paid to the insurance company in accordance with the agency agreement between the insurance company and the agent. Deletes existing text requiring a seller to remit to the insurance company the premiums collected for an insurance policy that funds benefits not later than the 30th day after the date of collection.

(b) Provides that 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. Deletes existing text authorizing TDB to require evidence of payment of premiums on an insurance policy used to create a fund to guarantee benefits.

SECTION 18. Amends Section 154.205, Finance Code, as follows:

Sec. 154.205. New heading: CANCELLATION OF INSURANCE-FUNDED CONTRACT. (a) Creates this subsection from existing text. Authorizes a purchaser of an insurance-funded 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 until the third anniversary of the date of receipt of notice. Deletes existing text entitling a purchaser of an insurance-funded benefits contract who cancels the contract during the first year of the contract when payments required under the contract are current to receive the cash surrender value of the policy.

(b) Provides that cancellation of the contract under Subsection (a) does not automatically cancel the insurance policy funding the benefits contract. Authorizes the insurance policy to be canceled in accordance with the terms and conditions of the policy in exchange for the policy's cash surrender value.

SECTION 19. Amends Section 154.206, Finance Code, as follows:

Sec. 154.206. ASSIGNMENT OF RIGHT TO BENEFITS. (a) Creates this subsection from existing text. Authorizes the purchaser of an insurance-funded benefits contract to assign, rather than authorizes the purchaser of an insurance-funded benefits contract to irrevocably 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) Prohibits the assignment to the seller, the funeral provider, or an affiliated trustee from being made irrevocable unless 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 the assignee is specifically prohibited from exercising any right under the policy except administration of the benefits.

(c) Provides that 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.

SECTION 20. Amends Section 154.207, Finance Code, as follows:

Sec. 154.207. New heading: RECEIPT OF BENEFITS PAYABLE UNDER POLICY. (a) Prohibits a seller or funeral provider that has been assigned the benefits payable under an insurance policy funding benefits from receiving 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 certification from the funeral provider attesting to matters required by Subsections (a)(2) and (3) and other documents as required by the insurance company to process and pay the claim. Deletes existing text authorizing the seller or funeral provider to withdraw the benefits payable under an insurance policy funding benefits after the beneficiary named in the contract dies, the funeral service is completed, and the insurance company is presented with appropriate affidavits by an officer or designated agent of the seller on forms prescribed by TDB and a certified copy of the death certificate.

(b) Requires the seller to maintain copies of the documentation submitted to the insurance company and a copy of the death certificate, rather than the affidavits and death certificate, for examination by TDB.

SECTION 21. Amends Subchapter E, Chapter 154, Finance Code, by adding Section 154.208, as follows:

Sec. 154.208. ADVISORY COMMITTEE. (a) Requires the commissioner to appoint an advisory committee to review and make recommendations regarding the technical procedures and processes employed by TDB to regulate insurance-funded benefits and monitor compliance of sellers of insurance-funded contracts under this chapter, including recommendations relating to certain matters.

(b) Sets forth the composition of the advisory committee appointed by the commissioner.

(c) Authorizes the commissioner of insurance, at the request of the commissioner, to appoint a representative of TDI to serve on the advisory committee.

(d) Requires the advisory committee, not later than the 30th day after the date all of the initial appointments to the advisory committee have been made, to meet and select a presiding officer. Requires the advisory committee, after the initial meeting, to meet as necessary at the call of the commissioner.

(e) Provides that a member of the advisory committee serves without compensation. Entitles a member of the advisory committee, if authorized by the commissioner, to reimbursement for reasonable expenses incurred in attending committee meetings.

(f) Provides that 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. Requires the commissioner to notify the commission of each recommendation of the advisory committee and the reasons for the recommendation.

SECTION 22. Amends Section 154.262(a), Finance Code, to authorize the seller of a trust-funded benefits contract to 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 (Retention of Money For Expenses), after the funeral provider has completed the provider's obligations under Section 154.161(a) with respect to the contract, and the depository is presented with appropriate affidavits by an officer or agent of the seller on forms prescribed by TDB, attesting to matters required by Subsections (a)(2) and (3) and a certified copy of the death certificate. Makes nonsubstantive changes.

SECTION 23. Amends Section 154.351, Finance Code, as follows:

Sec. 154.351. MAINTENANCE OF GUARANTY FUND. (a) Creates this subsection from existing text. Requires the commission by rule to establish and TDB to maintain a fund to guarantee performance by sellers of benefits contracts of their obligations to the purchasers, rather than to guarantee performance by sellers of benefits contracts of their obligations to the purchasers, under the provisions of this chapter governing prepaid funeral trusts.

(b) Requires TDB, except as provided by Subsection (c), for purposes of claims and assessments, to maintain separate accounts within the fund for trust-funded contracts and insurance-funded contracts.

(c) Authorizes the advisory council under Section 154.355 to authorize borrowing between accounts to facilitate prompt and efficient resolution of claims against an account with an insufficient balance if the indebted account is obligated to pay interest at a rate that will reasonably compensate the lending account for lost earnings, required, or planned assessments for the benefit of the indebted account are pending and sufficient to repay the lending account, and assessments collected for the benefit of the indebted account are transferred to the lending account until the borrowed amount plus interest has been repaid.

SECTION 24. Amends Subchapter H, Chapter 154, Finance Code, by adding Section 154.3525, as follows:

Sec. 154.3525. ASSESSMENT ON INSURANCE-FUNDED CONTRACTS. (a) Authorizes TDB to assess and collect from a seller not more than \$1 for each insurance-funded contract sold during each calendar year and requires TDB to deposit the assessments in the insurance-funded contract account within the fund.

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

SECTION 25. Amends Section 154.355, Finance Code, as follows:

Sec. 154.355. ADVISORY COUNCIL. (a) Requires an advisory council composed of the following individuals to supervise the operation and maintenance of the fund: the commissioner or the commissioner's representative; the attorney general or the attorney general's representative; two representatives of the prepaid funeral industry, rather than one representative of the funeral industry, appointed by the commission, one of whom represents trust-funded benefits contract sellers and one of whom represents insurance-funded benefits contract sellers; and one consumer representative appointed by the commission. Makes conforming changes.

(b) Provides that the prepaid funeral industry and consumer representatives serve two-year terms and may not serve more than four terms, rather than two terms.

(c) Requires the commissioner to render a final decision, rather than cast the deciding vote, if there is a tie vote by members of the advisory council.

SECTION 26. Amends Subchapter H, Chapter 154, Finance Code, by adding Section 154.3551, as follows:

Sec. 154.3551. LIMIT ON LIABILITY. (a) Provides that 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) Requires the attorney general to 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) Provides that the attorney general is not required to defend a member of the advisory council against an action relating to the disposition of a claim filed under this subchapter or any issue other than the applicability or effect of the limitation on liability under this section.

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

SECTION 27. Amends Section 154.356, Finance Code, as follows:

Sec. 154.356. New heading: ASSESSMENT ON OUTSTANDING TRUST-FUNDED CONTRACTS TO PAY CLAIMS. (a) Authorizes the advisory council, to pay a claim against the fund when the balance of the trust-funded contract account, rather than fund, is insufficient to pay that claim, to assess each permit holder, rather than person who holds a permit, that has outstanding trust-funded contracts an amount, rather than an amount under this chapter, based on the permit holder's proportionate share of the purchaser's deposits on all outstanding trust-funded, rather than benefits, contracts determined as of the end of the preceding calendar year.

(b) Requires that the assessments be deposited in the trust-funded contract account with the fund and administered by TDB and the advisory council in accordance with commission rules.

(c) Makes no changes to this subsection.

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

SECTION 28. Amends Subchapter H, Chapter 154, Finance Code, by adding Section 154.3565, as follows:

Sec. 154.3565. ASSESSMENT ON OUTSTANDING INSURANCE-FUNDED CONTRACTS TO PAY CLAIMS. (a) Authorizes the advisory council, to pay a claim against the fund when the balance of the insurance-funded contract account is insufficient to pay that claim, to 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) Requires that the assessments be deposited in the trust-funded contract account with the fund and administered by TDB and the advisory council in accordance with commission rules.

(c) Provides that an assessment under this section is in addition to any assessment required by Section 154.3525.

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

SECTION 29. Amends Subchapter H, Chapter 154, Finance Code, by adding Sections 154.358, 154.359, and 154.360, as follows:

Sec. 154.358. CLAIMS AGAINST FUND. (a) Provides that 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) Authorizes a claim against the fund to be made by certain individuals.

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

an approved claim or expense relating to an insurance-funded contract be paid only from the fund's insurance-funded contract account.

Sec. 154.359. PERMISSIBLE USES OF FUND. (a) Authorizes the fund, in addition to uses authorized by Section 154.354 (Use of Fund Earnings), to be used to pay certain losses and expenses.

(b) Prohibits the fund from being required to pay any claimant an amount that exceed the contractual obligations specified by the express written terms of the benefits contract, including certain claims.

(c) Prohibits a claim from being approved for a loss to the extent the claim is insured, bonded, or otherwise covered, protected, or reimburse from other sources, including coverage provided by the Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association under Chapter 463 (Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association), Insurance Code.

Sec. 154.360. SUBROGATION. (a) Provides that 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 benefits, is considered to have assigned to the fund the rights under, and any cause of action relating to, the benefits contract to the extent of the benefits received. Authorizes the commissioner, notwithstanding this assignment by law, to 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) Provides that 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 benefits contract.

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

SECTION 30. Amends Sections 154.408(b) and (d), Finance Code, as follows:

(b) Requires that the order state the effective date of the order, rather than the effective date, which may not be before the 16th day after the date the order is mailed.

(d) Provides that the order, except as provided by Section 154.4081, takes effect as proposed, except that the order is prohibited from taking 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.

SECTION 31. Amends Subchapter I, Chapter 154, Finance Code, by adding Section 154.4081, as follows:

Sec. 154.4081. EMERGENCY ORDER. (a) Authorizes the commissioner to 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 benefits contract.

(b) Provides that an emergency order remains in effect unless stayed by the commissioner.

(c) Authorizes the person named in the order to request in writing an opportunity for a hearing to show that the emergency order should be stayed. Requires the commissioner, on receipt of the request, to 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) Provides that the hearing is an administrative hearing relating to the validity of findings that support immediate effect of the order.

SECTION 32. Amends the heading to Section 154.412, Finance Code, to read as follows:

Sec. 154.412. SEIZURE OF PREPAID ACCOUNTS AND RECORDS.

SECTION 33. Amends Section 154.412, Finance Code, by amending Subsections (a), (c), and (d) and adding Subsections (c-1), (f), and (g), as follows:

(a) Authorizes the commissioner to issue an order to seize accounts in which prepaid funeral funds, including earnings, may be held, rather than authorizing the commissioner, after the commissioner cancels or fails to renew a permit under Section 154.109(a) (relating to grounds for cancellation or suspension of a permit) or on notice to a person required to obtain a permit under this chapter, to issue an order to seize the prepaid funeral money, including earnings, where that money is held. Deletes existing text authorizing the commissioner to issue an order to seize the records that relate to the sale of benefits if the commissioner finds, by examination or other credible evidence that a person did not apply for a new permit before the 31st day after the date the transfer was completed or was denied a new permit.

(c) Provides that 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 benefits contract.

(c-1) Provides that an emergency order remains in effect unless stayed by the commissioner. Authorizes the person named in the order to request in writing an opportunity for a hearing to show that the emergency order should be stayed. Requires the commissioner, on receipt of the request, to 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. Provides that the hearing is an administrative hearing relating to the findings that support immediate effect of the order.

(d) Provides that 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.

(f) Authorizes the commissioner, after the issuance of an order under this section, to initiate an administrative claim for ancillary relief, including a claim for certain costs.

(g) Provides that 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.

SECTION 34. Amends Section 1701.005(a), Insurance Code, to provide that this chapter does not apply to a rider or endorsement that is used at the request of the holder of a policy, contract, or certificate subject to this chapter and that relates to the modification of a previously approved insurance policy form for the sole purpose of adding the statement required by Section 154.2021(a)(3). Makes nonsubstantive changes.

SECTION 35. Requires the commissioner, not later than November 1, 2009, to appoint the initial members of the advisory committee established by Section 154.208, Finance Code, as added by this Act.

SECTION 36. (a) Makes application of Section 154.102, Finance Code, as amended by this Act, prospective to September 1, 2009.

(b) Provides that Section 154.102, Finance Code, as amended by this Act, does not apply to the renewal of a permit originally issued before September 1, 2009, if the permit is timely and continuously renewed after that date and is not suspended, canceled, or nonrenewed for reasons other than the requirements of Section 154.102, Finance Code. Provides that an application for renewal that meets the conditions of this subsection is governed by the law as it existed immediately before the effective date of this Act, and that law is continued in effect for that purpose.

(c) Makes application of Section 154.151, Finance Code, as added by this Act, prospective to January 1, 2010.

(d) Makes application of Section 154.2021(a), Finance Code, as added by this Act, prospective to January 1, 2010.

SECTION 37. (a) Provides that Subchapter H, Chapter 154, Finance Code, as amended by this Act, does not apply to a loss under an insurance-funded benefits contract that arises from or relates to the occurrence of one of the following events before September 1, 2009: an event of default under the contract; the suspension, revocation, or refusal to renew the permit of the contract seller under Chapter 154, Finance Code; or the bankruptcy, receivership, seizure, or other failure of the contract seller.

(b) Provides that money in the guaranty fund on September 1, 2009, is allocated to the trust-funded account within the guaranty fund created by Section 154.351, Finance Code, as amended by this Act.

SECTION 38. Authorizes a fund, investment, security, or contract included in a plan approved before the effective date of this Act by TDB under Section 1a, Chapter 512 (relating to the sale of prepaid funeral services or merchandise), Acts of the 54th Legislature, 1955 (Article 548b, V.T.C.S.), to continue in effect. Provides that any funds paid in accordance with the approved plan under a contract entered into before, on, or after the effective date of this Act continue to be governed in accordance with the approved plan.

SECTION 39. Repealer: Section 154.106(c) (relating to requiring the commissioner to follow certain procedures for denying the permit application and for seizing money or records for certain reasons), Finance Code.

SECTION 40. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2009.

(b) Effective date, Subchapter C-1, Chapter 154, Finance Code, as added by this Act, and Sections 154.052(a) and 154.053, Finance Code, as amended by this Act: June 1, 2010.