

FINANCE CODE

CHAPTER 154. PREPAID FUNERAL SERVICES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 154.002. DEFINITIONS. In this chapter:

(1) "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 ~~[the funeral home]~~ designated in a prepaid funeral benefits contract that agrees ~~[has agreed]~~ to provide the specified prepaid funeral benefits.

(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 or Permit Holder" means a person that holds a permit to sell, solicit, and administer prepaid funeral benefits contracts under this chapter ~~[selling, accepting money or premiums~~

1 ~~for, or soliciting contracts for prepaid funeral benefits or contracts or insurance policies to fund prepaid~~
2 ~~funeral benefits in this state].~~

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

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

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

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

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

13 (14) "Seller's delegate" means a person authorized in writing by the seller under the
14 law of agency to act on the seller's behalf to sell, solicit or administer contracts for prepaid funeral
15 benefits.

16 (15) "Trust-funded permit" means a permit issued under this Chapter to sell prepaid
17 funeral benefits contracts for which the money paid is placed in a financial institution.

18 (16) "Insurance-funded permit" means a permit issued under this Chapter to sell
19 prepaid funeral benefits contracts funded by an insurance policy.

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

22 SUBCHAPTER B. POWERS AND DUTIES OF DEPARTMENT

23 Sec. 154.051. ADMINISTRATION OF CHAPTER; FEES. (a) The department shall

1 administer this chapter.

2 (b) The commission may adopt reasonable rules concerning:

3 (1) fees to defray the cost of administering this chapter;

4 (2) the keeping and inspection of records relating to the sale of prepaid funeral benefits;

5 (3) the filing of contracts and reports;

6 (4) changes in the management or control of the seller ~~[an organization]~~; and

7 (5) any other matter relating to the enforcement and administration of this chapter.

8 (c) The commission may adopt rules to administer and enforce this chapter, including rules
9 necessary or appropriate to recover the cost of maintaining and operating the department and the cost
10 of administering and enforcing this chapter and other applicable law by imposing and collecting
11 proportionate and equitable fees and costs for notices, applications, examinations, investigations, and
12 other actions required to achieve the purposes of this chapter. The department may not maintain
13 unnecessary fund balances. ~~[Fee amounts must be set in accordance with this requirement.]~~

14 Sec. 154.053. RECORDS; EXAMINATION. (a) A seller that has outstanding contracts for
15 prepaid funeral benefits shall maintain in this state any record required by the department to determine
16 whether the seller is complying with this chapter. ~~[The record is subject to annual examination by the~~
17 ~~department or its agent and to additional examinations the department considers necessary.]~~

18 (b) The department may perform examinations as reasonably necessary to administer and
19 enforce this chapter and rules adopted. ~~[The department may examine or audit a record relating to~~
20 ~~prepaid funeral benefits, at any place and in any manner the department considers necessary to protect~~
21 ~~the interests of the purchasers or beneficiaries.]~~

22 (c) The department may:

23 (1) conduct an examination annually or at other times as the department may
24 reasonably require; and

1 (2) conduct an on-site examination or an off-site review of records.

2 ~~[As part of the examination, the department shall be given access to records relating to prepaid~~
3 ~~funeral benefits of each entity holding a deposit or premium for an annuity contract or a policy of~~
4 ~~insurance under the account and to any other record necessary to protect the interests of the~~
5 ~~beneficiaries.]~~

6 (d) The department shall be given access to all records the department may reasonably require
7 to determine compliance with the provisions of this chapter. The records must be provided at the
8 location specified by the department.

9 ~~[Sec. 154.054. EXAMINATION FEE. (a) For each examination conducted under Section~~
10 ~~154.053, the commissioner or the commissioner's agent shall impose on the seller a fee in an amount~~
11 ~~set by the commission under Section 154.051 and based on the seller's total outstanding contracts.~~

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

13 ~~[(1) the cost of the examination, including:~~

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

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

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

18 and

19 ~~[(3) the cost of enforcing this chapter.]~~

20 SUBCHAPTER C. PERMITS

21 Sec. 154.101. PERMIT REQUIREMENT. A person must hold a trust-funded or insurance-
22 funded permit issued under this subchapter or be a seller's delegate to:

23 (1) sell prepaid funeral benefits ~~[, or accept money for prepaid funeral benefits,]~~ in this
24 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; or [-]

(3) administer prepaid funeral benefits contracts.

Sec. 154.1011. RESPONSIBILITIES OF THE SELLER. (a) In accordance with rules adopted by the commission, the seller is responsible for:

(1) the actions of its seller's delegates relating to the sale and administration of prepaid funeral benefits;

(2) subject to subsection (b), delivery of funeral merchandise and services in accordance with the terms of the prepaid funeral benefits contract upon the death of the contract beneficiary; and

(3) subject to subsection (c), maintenance of all records required by the Department pursuant to Section 154.053.

(b) If the seller is not a funeral provider, the seller must execute a written agreement with each funeral provider that sets forth the nature and scope of the relationship between the seller and funeral provider and the respective rights and responsibilities of the parties with respect to the prepaid funeral contracts. The written agreement must obligate the funeral home to deliver the prepaid funeral benefits contract merchandise and services.

(c) If the seller is not a funeral provider, the seller may, by written agreement that meets the requirements of subsection (d), delegate to the funeral provider the responsibility to:

(1) maintain the records to verify contract performance at the time of death per Section 154.207(b); and

1 (2) refund any contract overcharges revealed by verification of contract performance.

2 (d) An agreement under subsection (c) may contain additional provisions that are not
3 inconsistent with this chapter, and must:

4 (1) obligate the funeral provider to promptly provide such documentation to the seller or
5 the department as may be reasonably requested by the seller or the department;

6 (2) state whether the agreement applies to prepaid funeral contracts sold prior to and
7 outstanding as of the date of the agreement;

8 (3) advise the funeral provider that violation of the agreement or applicable provisions
9 of this chapter may subject the funeral provider to an enforcement action under this chapter;

10 (4) acknowledge the funeral provider consents to examination;

11 (5) obligate the parties to protect any nonpublic personal financial or health
12 information of the purchaser and contract beneficiary under the prepaid contract in compliance with
13 applicable law; and

14 (6) otherwise comply with rules adopted by the commission to set minimum standards
15 for an agreement under subsection (b).

16 Sec. 154.1012. INSURANCE-FUNDED PREPAID FUNERAL PERMITS. (a) Except as
17 provided by this section, only an insurance company or a funeral provider authorized to engage in
18 business in this state may hold an insurance-funded permit in this state.

19 (b) If the domiciliary law of an insurance company authorized to engage in business in this
20 state does not permit the insurance company to hold an insurance-funded permit in this state, the
21 insurance holding company for the insurance company may hold the permit.

22 (c) Unless waived by the department for good cause, an insurance company or its insurance
23 holding company must hold a permit under this chapter before the insurance company may assume or

1 reinsure an existing insurance policy funding a prepaid funeral benefits contract subject to this chapter.

2 (d) A seller of insurance-funded prepaid funeral benefits that is not an insurance company, an
3 insurance holding company, or a funeral provider and that holds a permit under this chapter on
4 September 1, 2009, must continue to renew the permit under this chapter for administration of
5 outstanding prepaid funeral contract obligations only. No new prepaid funeral benefits contracts may
6 be entered into by such persons after that date unless an application has been filed to transfer the
7 permit to an insurance company, insurance holding company or funeral provider.

8 Sec. 154.1013 TRUST-FUNDED PREPAID FUNERAL PERMITS. (a) After August 31,
9 2009, only a funeral provider may apply for a new permit to hold a trust-funded permit in this state.

10 Sec. 154.102. PERMIT APPLICATION; FEE. (a) To obtain a trust-funded or insurance-
11 funded permit to sell or continue to sell prepaid funeral benefits, a person must:

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

14 (2) pay a filing fee in an amount set by the commission under Section 154.051; and

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

17 Sec. 154.103. ISSUANCE OR RENEWAL OF PERMIT. (a) The commissioner may
18 investigate an applicant before issuing an initial permit or renewing a permit.

19 (b) The commissioner shall approve the application and issue a permit to the applicant or
20 renew a permit if the commissioner finds that the business ability, experience, character, financial
21 condition, and general fitness of the applicant warrant the public's confidence and that all statutory
22 requirements have been met. The commissioner shall notify the applicant if the commissioner finds
23 otherwise.

1 (c) Applicants for issuance or renewal of an insurance-funded permit that are not funeral
2 providers must meet net worth requirements specified by commission rule.

3 (1) The net worth under generally accepted accounting principles required by rule to
4 write and carry up to \$100,000 in total face value of outstanding prepaid funeral contracts shall not be
5 less than \$100,000. Higher net worth may be required by increments for a total face value of
6 outstanding prepaid funeral contracts carried in excess of \$100,000, as the commission finds necessary
7 to protect the public. The maximum net worth requirement shall not exceed \$500,000.

8 (2) Applicants that cannot demonstrate the required initial minimum net worth required
9 by rule may voluntarily submit and request commissioner acceptance of alternative evidence of
10 financial stability and resources. Such additional evidence may include a letter of credit, or a
11 performance bond.

12 (3) The commissioner may accept such alternative evidence or arrangements in lieu of
13 the required net worth only if the commissioner determines such alternative evidence or arrangements
14 are an adequate substitute for required net worth and that acceptance would not substantially increase
15 the risk to existing or future customers of nonperformance by the applicant.

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

18 Sec. 154.106. TRANSFER OF BUSINESS OWNERSHIP. (a) A permit holder shall notify
19 by registered mail the department and the depository of the money held under Subchapter F of a
20 transfer in the ownership of the permit holder's business not later than the seventh day after the date the
21 transfer is completed.

22 (b) If the transfer is to a person who is not a permit holder, the person shall file an application
23 for a permit with the department in accordance with this subchapter and the transfer of contracts and

1 funds may not occur until the applicant's permit has been approved ~~[not later than the 30th day after~~
2 ~~the date the transfer is completed]~~.

3 (c) The commissioner shall follow the procedures under Sections 154.109-154.111 and
4 Subchapter I for denying the permit application and for seizing the money or records if the person to
5 whom the business is transferred:

6 (1) does not file the application within the period prescribed by Subsection (b); or

7 (2) does not meet the requirements for issuance of a permit under this subchapter.

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

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

13 (2) misrepresented or concealed a material fact in the permit application or any
14 Department filing, including records presented for examinations; ~~[or]~~

15 (3) obtained, or attempted to obtain, the permit by misrepresentation, concealment, or
16 fraud; or

17 (4) does not meet the provisions of §154.103.

18 (b) The commissioner by order may refuse to renew a permit if the commissioner finds, by
19 examination or other credible evidence, that the permit holder:

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

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

23 (c) The commissioner may cancel the permit of a seller that fails to provide to the department

1 evidence of payment of insurance premiums required by the department under Section 154.203 after
2 the department by written notice requests the evidence.

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

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

6 or

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

8 SUBCHAPTER D. GENERAL PROVISIONS FOR SALES CONTRACTS

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

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

12 (1) be in writing;

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

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

17 (c) A funeral provider designated in the contract to provide prepaid funeral benefits that are not
18 sold by the funeral provider must:

19 (1) be a party to the contract; and

20 (2) agree in the contract to provide those benefits.

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

1 complying with this subsection and shall enforce this subsection.

2 (e) The Finance Commission of Texas by rule shall establish a standard disclosure that must be
3 included in each contract to inform purchasers of the goods and services that will be provided or
4 excluded under the contract and the circumstances under which the contract may be modified after
5 death of the beneficiary.

6 (f) The seller must provide to every potential purchaser an informational brochure prescribed or
7 approved by the department regarding prepaid funeral benefits contracts. The brochure must provide a
8 description of the trust and insurance funding options available under Texas law and a comparison of
9 the terms of the funding types with examples. The prepaid funeral contract must contain a statement
10 initialed by the purchaser indicating receipt of the brochure.

11 Sec. 154.1511. NON-GUARANTEED MERCHANDISE AND SERVICES. (a) A prepaid
12 funeral contract may allow for certain merchandise and services selected to not be fixed or guaranteed
13 in price and will be determined by existing prices at the time the merchandise and services are
14 delivered or provided upon the death of the contract beneficiary. The non-guaranteed merchandise and
15 services selected on a prepaid funeral contract must be clearly grouped together and segregated from
16 other charges so that the average consumer can easily understand what items will not be fixed or
17 guaranteed in price.

18 (1) The following merchandise and services may be included in the prepaid funeral benefits
19 contract as non-guaranteed:

20 (A) Cemetery Opening and Closing Fees:

21 (B) Cemetery Set-up Fees (tent-chairs-carpet-dirt/rock removal):

22 (C) Police Escorts:

23 (D) Newspaper Notices:

1 (E) Death Certificates;

2 (F) Flowers;

3 (G) Musicians and Singers;

4 (H) Clergy Honorarium;

5 (I) Outer Burial Container Installation Fees;

6 (J) Crematory Services

7 (K) Pallbearers; and

8 (L) Catering.

9 (b) The proportionate part of the contract's trust or policy earnings to the total prepaid contract
10 price that are attributable to the non-guaranteed merchandise and services will be applied to the
11 balance owing on the existing prices at the time the non-guaranteed merchandise and services are
12 delivered or provided.

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

17 (b) Not later than the 30th day after the date the seller receives the written [of the] cancellation
18 notice, the seller shall [withdraw and] pay to the purchaser the cancellation benefit pursuant to Sections
19 154.205 and 154.254 [money in the depository being held for the purchaser's use and benefit].

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

21 (d) ~~[The purchaser is entitled to receive the actual amount paid by the purchaser and half of all~~
22 ~~earnings attributable to that money, less the amount permitted to be retained as provided by Section~~
23 ~~154.252, except as provided by Subsection (e) and by Sections 154.205 and 154.254.]~~

1 [(e)] A purchaser who cancels a contract on the solicitation of the seller is entitled to a refund
2 of ~~[withdraw]~~ all money paid to the seller and all earnings or accumulated value less administrative
3 and trustee fees attributable to that money. If the money is used to purchase a new prepaid funeral
4 benefits contract under a solicitation by the seller, the new contract must protect the purchaser to an
5 extent equal to or greater than that provided by the original contract, as determined by the department.
6 Under the new contract, the cost to the purchaser of the same or substantially the same services or
7 merchandise may not be greater than that provided by the canceled contract.

8 Sec. 154.156. WAIVER OF RIGHT OF CANCELLATION. (a) The purchaser of a prepaid
9 funeral benefits contract may irrevocably waive the purchaser's right to cancel the contract under
10 Section 154.155 if the waiver is necessary for the purpose of qualifying for Medicaid, Social Security
11 income, or another public assistance program. The waiver must be in a separate writing signed by the
12 purchaser and the seller. ~~[-not earlier than the 15th day after the date of the purchase of the contract.~~
13 ~~The form of the waiver must comply with the requirements for the form of a sales contract under~~
14 ~~Section 154.151.]~~

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

- 16 (1) a right the purchaser has under the contract to change the beneficiary of the
17 contract;
18 (2) the purchaser's right to cancel the contract under Section 154.413;
19 (3) an abandonment of the money paid by the purchaser under the contract as provided
20 by Subchapter G; or
21 (4) a modification to the contract as provided by Section 154.1551.

22 Sec. 154.157. PERFORMANCE OF CONTRACT. Delivery of funeral merchandise or
23 services before death is not performance, in whole or in part, of a prepaid funeral benefits contract

1 entered into after July 15, 1963.

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

4 (b) The seller shall notify the department of:

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

7 (2) any change in the designation not later than the tenth day after [within the 10-day
8 period preceeding] the date of the change.

9 (c) An agent designated under this section is:

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

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

13 SUBCHAPTER E. INSURANCE-FUNDED PREPAID FUNERAL BENEFITS

14 ~~[Sec. 154.201. REQUIREMENTS FOR SOLICITATION OF BENEFITS. A seller may not~~
15 ~~solicit an individual's designation of prepaid funeral benefits to be paid from a fund, investment,~~
16 ~~security, or contract, including an insurance policy, to be created or purchased by or for that individual~~
17 ~~at the suggestion or solicitation of the seller;~~

18 ~~[(1) unless the fund is created by an insurance policy approved by the Texas~~
19 ~~Department of Insurance and issued by an insurance company licensed by the Texas Department of~~
20 ~~Insurance;~~

21 ~~[(2) except as provided by Subchapter F for trust-funded prepaid funeral benefits; or~~

22 ~~[(3) unless the fund, investment, security, or contract has been approved by the~~
23 ~~department as safeguarding the rights and interests of the individual and the individual's heirs and~~

1 ~~assigns to substantially the same or a greater degree as provided with respect to money regulated by~~
2 ~~Subchapter F.]~~

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

6 **(b) Insurance policies used to fund prepaid funeral benefits must:**

7 **(1) be approved by the Texas Department of Insurance and be issued by an insurance**
8 **company licensed by the Texas Department of Insurance;**

9 **(2) contain on the cover page the following statement: This policy is issued to fund a**
10 **prepaid funeral benefits contract pursuant to Chapter 154 of the Texas Finance Code;**

11 **(3) contain a provision that prohibits the policy from being pledged, borrowed from,**
12 **converted, or otherwise encumbered unless the associated prepaid funeral benefit contract has been**
13 **cancelled; and**

14 **(4) contain a provision that guarantees an annual increase in the value of the policy.**

15 *Language being drafted.*

16 **(c) The aggregate initial face value of the policy(s) may not exceed the total contract price by**
17 **more than 5%.**

18 Sec. 154.203. PAYMENT OF PREMIUMS. (a) Premiums [~~A seller shall remit to the~~
19 ~~insurance company the premiums~~] collected from the purchaser for an insurance policy that funds
20 prepaid funeral benefits must be credited to the purchaser's insurance policy not later than the earlier
21 of:

22 **(1) the 30th day after the date of initial collection from the contract purchaser; or**

23 **(2) any deadline provided by the Insurance Code.**

(b) The department may require evidence of payment of premiums on an insurance policy used to create a fund to guarantee prepaid funeral benefits.

Sec. 154.205. AMOUNT PAYABLE ON CANCELLATION OF CONTRACT. A purchaser of an insurance-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 the cash surrender value of the policy. Cancellation of the prepaid funeral benefits contract does not cancel the funding policy.

Sec. 154.206. ASSIGNMENT OF RIGHT TO BENEFITS. Subject to Section 154.156(a), the [The] purchaser of an insurance-funded prepaid funeral benefits contract may irrevocably assign the purchaser's ownership of and rights to benefits under the insurance policy to the seller, the funeral provider, or a [the] trustee to the extent of such person's interest in the prepaid funeral benefits contract; provided that a trustee must be subject to a written trust agreement that requires handling insurance policy proceeds in accordance with the contract ~~[, or other person].~~

Sec. 154.207. WITHDRAWAL OF BENEFITS PAYABLE UNDER POLICY. (a) The seller ~~[or funeral provider]~~ may withdraw the benefits payable under an insurance policy funding prepaid funeral benefits after:

(1) the beneficiary named in the contract dies;

(2) the seller has verified or the funeral provider has certified that the funeral service is completed in compliance with the prepaid funeral contract; and

(3) the insurance company is presented with:

(A) appropriate affidavits by ~~[an officer or designated agent of]~~ the seller on forms prescribed by the department; and

(B) a certified copy of the death certificate.

(b) The seller shall maintain copies of the affidavits, the [and] death certificate, at-need contract, preneed contract, the certificate of performance and the pre-need to at-need reconciliation for examination by the department.

SUBCHAPTER F. TRUST-FUNDED PREPAID FUNERAL BENEFITS

Sec. 154.254. AMOUNT PAYABLE ON CANCELLATION OF CONTRACT. Except as provided by Section 154.155(d), a [A] purchaser of a trust-funded prepaid funeral benefits contract who cancels the contract:

(1) 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:

(A) ~~[(1)]~~ 90 percent of the actual amount paid by the purchaser; or

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

(2) after the first year of the 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 and administrative and trustee fees paid.

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 seller has verified that the funeral service is completed in compliance with the prepaid funeral contract; and

(3) the depository is presented with:

(A) appropriate affidavits by ~~[an officer or agent of]~~ the seller on forms

1 prescribed by the department; and

2 (B) a certified copy of the death certificate.

3 (b) The seller shall maintain copies of the affidavits, the [and] death certificate, the at-need
4 contract, the preneed contract, the certificate of performance and the pre-need to at-need reconciliation
5 for examination by the department.

6 SUBCHAPTER H. GUARANTY FUNDS [~~FUND~~]

7 Sec. 154.351. MAINTENANCE OF GUARANTY FUNDS [~~FUND~~]. (a) The commission by
8 rule shall establish and the department shall maintain funds [a-fund] to administer prepaid funeral
9 permits and guarantee performance by sellers of prepaid funeral benefits contracts of their obligations
10 to the purchasers under the provisions of this chapter [~~governing prepaid funeral trusts~~].

11 (b) A fund shall be established to guarantee the obligations in trust-funded prepaid funeral
12 benefit contracts and to administer trust-funded permits. A separate fund shall be established to
13 guarantee the obligations in insurance-funded prepaid funeral benefit contracts that are not otherwise
14 guaranteed by the Life, Accident, Health and Hospital Service Insurance Guaranty Association and to
15 administer insurance-funded permits. The trust-funded guaranty fund may only be used for trust-
16 funded contracts and the insurance-funded guaranty fund may only be used for insurance-funded
17 contracts.

18 Sec. 154.352. [~~ASSESSMENT ON SALES CONTRACTS~~] TRUST-FUNDED GUARANTY
19 FUND. (a) The department shall assess and collect from a seller of trust-funded prepaid funeral
20 benefits contracts not more than \$1 for each unmaturred prepaid funeral benefits contract sold during
21 each calendar year and shall deposit the assessments in the trust-funded guaranty fund.

22 (b) The department shall maintain the [~~stop assessing the amounts required by Subsection (a)~~
23 ~~when the~~] amount in the fund at a minimum of [first reaches] \$1 million and shall cease assessing the

1 amounts required by subsection (a) as long as this balance is present.

2 (c) The fund may be deposited with:

3 (1) the comptroller;

4 (2) a federally insured financial institution that has its main office or a branch in this

5 state; or

6 (3) in trust with a financial institution that has its main office or a branch in this state

7 and is authorized to act as a fiduciary in this state.

8 (d) If the fund is deposited with the comptroller, the comptroller shall manage the fund as

9 trustee of money outside the state treasury.

10 Sec. 154.353. DEPOSIT OF FUND INSURANCE-FUNDED GUARANTY FUND

11 (a) The department shall annually assess and collect from a seller of insurance-funded prepaid
12 funeral benefits contracts not more than \$1 for each prepaid funeral benefits contract sold after August

13 31, 2009 and shall deposit the assessments in the insurance-funded guaranty fund.

14 (b) The department shall maintain the amount in the fund at \$1,000,000 and shall cease
15 assessing the amounts required by subsection (a) as long as this balance is present.

16 (c) The fund may be deposited with:

17 (1) the comptroller;

18 (2) a federally insured financial institution that has its main office or a branch in this

19 state; or

20 (3) in trust with a financial institution that has its main office or a branch in this state

21 and is authorized to act as a fiduciary in this state.

22 (d) [(b)] If the fund is deposited with the comptroller, the comptroller shall manage the fund as

23 trustee of money outside the state treasury.

1 Sec. 154.354. USE OF FUND EARNINGS. The department may use the earnings from the
2 trust funded guaranty fund to operate and maintain the trust-funded guarantee fund and earnings from
3 the insurance funded guaranty fund to operate and maintain the insurance-funded guarantee fund.

4 Sec. 154.355. ADVISORY COUNCIL. (a) An advisory council composed of the following
5 individuals shall supervise the operation and maintenance of the funds [~~fund~~]:

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

7 (2) the attorney general or the attorney general's representative;

8 (3) one representative of the funeral industry appointed by the Finance Commission of
9 Texas; and

10 (4) one consumer representative appointed by the Finance Commission of Texas.

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

13 (c) The commissioner shall cast the deciding vote if there is a tie vote by members of the
14 advisory council.

15 Sec. 154.356. ASSESSMENT ON OUTSTANDING CONTRACTS TO PAY
16 OBLIGATIONS [CLAIMS]. (a) To pay an obligation [~~a claim~~] against a [~~the~~] fund when the balance
17 of the fund is insufficient to pay that obligation [~~claim~~], the advisory council may assess each [~~person~~
18 ~~that holds a~~] permit holder that has contracts guaranteed by the particular fund under this chapter based
19 on the permit holder's proportionate share of the purchasers' deposits on or policies for all outstanding
20 prepaid funeral benefits contracts.

21 (b) The assessments shall be deposited in the respective trust or insurance fund and
22 administered by the department and the advisory council in accordance with commission rules.

23 (c) An assessment made under this section is in addition to any assessment required by Section

1 154.352 or Section 154.353.

2 Sec. 154.357. GUARANTY FUND CLAIM [~~AGAINST SELLER OR DEPOSITORY~~]. The
3 department may assert a claim against a seller, seller's delegate or depository that commits a violation
4 of this chapter that could result in a claim against the prepaid funeral guarantee funds [~~fund~~].

5 SUBCHAPTER I. CRIMINAL PENALTIES AND CIVIL REMEDIES

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

- 9 (1) makes or attempts to make a contract in violation of this chapter;
10 (2) refuses to allow an inspection of the seller's, or funeral provider's records relating to
11 the sale of prepaid funeral benefits that may be reasonably retrieved;
12 (3) engages in fraud, deception, misrepresentation, or another dishonest practice in the
13 sale of a contract subject to this chapter; or
14 (4) otherwise violates this chapter.

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

- 17 (1) a fine of not less than \$100 or more than \$500;
18 (2) confinement in the county jail for a term of not less than one month or more than
19 six months; or
20 (3) both the fine and confinement.

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

22 Sec. 154.405. CRIMINAL PENALTY FOR AGENT'S FAILURE TO DEPOSIT CERTAIN
23 MONEY. (a) An [~~a designated~~] agent or seller's delegate [~~of a seller~~] commits an offense if the agent

1 or delegate fails to remit [deposit] money collected under a prepaid funeral benefits contract for
2 deposit before the 31st day after the date it is received by the agent or delegate.

3 (b) It is an exception to the application of this section that the failure to make a deposit is
4 inadvertent and is corrected before the 11th day after the date the seller discovers the failure.

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

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

11 (b) The order must state:

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

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

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

17 (d) The commissioner may issue an emergency order that takes effect immediately, if the
18 commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary
19 under a prepaid funeral benefits contract. An emergency order remains in effect unless stayed by the
20 commissioner. The person named in the order may request in writing an opportunity for a hearing to
21 show that the emergency order should be stayed. Upon receipt of such request, the commissioner shall
22 fix a time, not more than twenty days after receipt of such request, unless extended at the request of the
23 person named in the order, at which the person may appear for an administrative hearing regarding the

1 findings that support immediate effect of the order.

2 (e) A non-emergency [The] order takes effect as proposed, which may not be before the 16th
3 day after the date the order is mailed, unless the person named in the order requests a hearing not later
4 than the 15th day after the date the order is mailed.

5 Sec. 154.412. SEIZURE OF PREPAID FUNERAL ACCOUNTS [MONEY] AND
6 RECORDS. (a) [~~After the commissioner cancels or fails to renew a permit under Section 154.109(a)~~
7 ~~or on notice to a person required to obtain a permit under this chapter,~~] The [the] commissioner may
8 issue an order to seize accounts where [the] prepaid funeral funds [money], including earnings, may be
9 [~~where that money is~~] held and may issue an order to seize the records that relate to the sale of prepaid
10 funeral benefits if the commissioner finds, by examination or other credible evidence, that the person:

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

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

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

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

17 (5) does not hold a permit or transferred the ownership of its business to another person
18 who does not hold a permit and who:

19 (A) did not apply for a new permit before the 31st day after the date the transfer
20 was completed; or

21 (B) was denied a new permit.

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

1 (c) An order takes effect immediately, and continues in effect unless the order is stayed by the
2 commissioner, if the commissioner finds that immediate and irreparable harm is threatened to the
3 public or a beneficiary under a prepaid funeral benefits contract. If such a threat does not exist, the
4 order must state the effective date, which may not be before the 16th day after the date the order is
5 mailed. An emergency order remains in effect unless stayed by the commissioner. The person named
6 in the order may request in writing an opportunity for a hearing to show that the emergency order
7 should be stayed. Upon receipt of such request, the commissioner shall fix a time, not more than
8 twenty days after receipt of such request, unless extended at the request of the person named in the
9 order, at which the person may appear for an administrative hearing regarding the findings that support
10 immediate effect of the order.

11 (d) A non-emergency ~~[An]~~ order takes effect as proposed unless the person named in the order
12 requests a hearing not later than the 15th day after the date the order is mailed.

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

15 (f) After the issuance of an order under this section, the commissioner may initiate an
16 administrative claim for ancillary relief, including a claim for costs incurred in the administration,
17 transfer, or other disposition of the seized assets and records, or costs reasonably expected to be
18 incurred in connection with administration and performance of any outstanding prepaid funeral
19 benefits contracts sold by a person subject to the order. The remedy provided by this subsection is not
20 exclusive and does not limit the discretion of the commissioner to seek additional remedies authorized
21 under this subchapter.