

Texas Finance Code, Chapter 154, Prepaid Funeral Services
Explanation of Intent of Proposed Changes

154.002 – Changes to definitions are intended to clarify roles of parties to a prepaid funeral benefit contract and to distinguish the two types of permits.

- “Funeral provider” – should include any provider of funeral merchandise or service, such as a cemetery.
- “Seller or permit holder” – clarifies that “seller” and “permit holder” are synonymous terms.
- “Seller’s delegate” – technically the same as an agent for the seller as principal, use of the term “seller’s delegate” is proposed to avoid confusion with insurance law and insurance agents.
- “Trust-funded permit” and “insurance-funded permit” – added to distinguish between the two types of permits and to permit further differentiation is requirements as appropriate.

154.051 – Proposed changes would make this statute more parallel with banking and money services business statutes and help prevent hidden taxes that could result from legislatively required assessments in excess of the cost of regulation, the excess intended to go to general revenue of the state. This change would make 154.054 no longer necessary.

154.053 – Clarifies the examination authority of the Department; reorganized for better flow of concepts.

154.054 – Section would no longer be necessary if Section 154.051 is amended as stated above.

154.101 – Acknowledges that some licensed conduct occurs through agents of the seller, or seller’s delegates.

154.1011 – This new section would set out the responsibilities of the seller/permit holder with respect to the offer, sale, and administration of prepaid funeral contracts, which would include reasonable control over actions of seller’s delegates taken on the seller’s behalf. The section would require the seller, if not a funeral provider, to have a written agreement with a funeral provider to deliver the prepaid funeral services and merchandise. The section would also allow the delegation of certain seller responsibilities to the funeral provider under a written agreement.

154.1012 – This new section would limit who can be an insurance-funded permit holder. Only an insurance company or its holding company or a funeral provider would be allowed to be an insurance-funded permit holder. Those permit holders that do not comply with this restriction on September 1, 2009 could continue to be licensed but only for administration of outstanding contracts, and not to sell new contracts. This provision is intended to eliminate minimally capitalized, third-party sellers and to prevent a third

party seller from abandoning its licensing obligation if it determines to no longer engage in new sales.

154.1013 – This new section would limit who can be a trust-funded permit holder. Only a funeral provider would be able to obtain a trust-funded permit after August 31, 2009. This provision would eliminate a third-party seller of trust funded contracts.

154.103 – Proposed changes would require a permit holder to continue to meet minimum licensing requirements for renewal of a permit. The proposal would also impose net worth requirements on third party sellers of insurance-funded contracts. The draft would impose a minimum net worth of \$100,000 and a maximum of \$500,000, and permit the finance commission to adopt rules specifying standards for determining the applicable net worth in between the minimum and maximum. The requirements would apply to both new applications for permit and renewals. The purpose is to eliminate the use of minimally capitalized permit holders and ensure that there is financial stability behind a permit holder. Net worth requirements could have prevented NPS from continuing to sell during their decline.

154.106 – Clarifies that a new permit applicant may not take prepaid funeral contracts or funds until a permit has been issued.

154.109 – The proposed revision would add two additional criteria for cancellation or suspension of a permit: (1) falsifying records for examination, and (2) failing to meet applicable net worth requirements for permit renewal.

154.151 – The proposal is intended to require a seller to deliver a standard informational brochure to any potential purchaser of a prepaid funeral benefits contract. The brochure would be developed by the department and industry, and would address the funding options permitted under state law. The purpose would be to describe the various funding options without requiring a seller to offer all the options.

154.1511 – This proposed new section would allow certain cash advance items to be included in a prepaid funeral benefits contract. The items that could be added are proposed to be limited to those listed in the new section. With respect to non-guaranteed items in the prepaid contract, the money received for those items plus a proportionate share of earnings would be applied to the at-need price for the items. Additional money may be owed at the time of need if the at-need price exceeds the funds available for that purpose.

154.155 – The proposed amendment would create a cross-reference to specific cancellation provisions in Section 154.205, for insurance-funded contracts, and Section 154.254, for trust-funded contracts. The cancellation language in this section regarding a trust-funded contract would be moved to Section 154.254 where it is more appropriate.

154.156 – The proposal would limit irrevocable contracts to situations in which the purchaser is attempting to qualify for public assistance. The proposed change would also remove the 15 day waiting period for waiver of cancellation rights.

154.160 – The proposal would change the notification requirement from ten days before a change of agent designation to ten days after a change.

154.201 – This section would no longer be necessary based on the proposed changes to Subchapter B (Section 154.051 et seq.).

154.202 – The proposed amendment would add requirements for insurance policies used to fund prepaid funeral benefits contracts, and would limit the “bump” to 5% of the contract. Under the proposal an insurance policy would have to:

- be approved by TDI and issued by an insurance company licensed by TDI
- indicate that it is being used to fund a prepaid funeral contract
- prohibit encumbrance or conversion
- contain a guaranteed growth provision, perhaps tied to a suitable index.

154.203 – The proposal would clarify that collection of prepaid funds by a seller’s delegate is equivalent to collection by the seller.

154.205 – The proposed amendment would simplify cancellation of an insurance-funded contract.

154.206 – The proposed changes would limit the purchaser’s ability to assign ownership and benefits of an insurance policy to only those with a pecuniary interest in the contract, and only to the extent of that interest. This change is meant to address abuses that have been seen such as the transfer of policy ownership to entities that later surrendered the policy without the purchaser’s knowledge or consent.

154.207 – The proposal would more clearly state the documents needed for a withdrawal.

154.254 – The proposed amendment would capture existing law regarding cancellation of a trust-funded contract and consolidate it into a single section (See Section 154.155).

154.262 – The proposal would more clearly state the documents needed for a withdrawal.

154.351 – 154.357 – The proposed amendments are intended to create a supplemental guaranty fund for insurance-funded contracts. Although insurance-funded policies are guaranteed under the Insurance Code, the existing trust guaranty fund does more by guaranteeing performance of contracts. The new guaranty fund would provide funds for administering the insurance-funded permit and guarantee performance, creating better parity between trust and insurance contracts.

154.401 and 154.405 – The proposal would clarify the parties that may be held accountable for violations.

154.408 and 154.412 – The proposed amendments would authorize emergency cease and desist action in specified situations for additional protection of the public. Currently, the Department has no ability to immediately stop a seller from continuing to sell prepaid funeral benefits contracts when evidence of malfeasance has resulted in an enforcement action. The amendment would also add the ability to seek costs incurred in the administration, transfer, or other disposition of assets, records, or performance of the contracts.