AN ACT
relating to prepaid funeral benefits contracts.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 154.106, Finance Code, is amended to read as follows:
Sec. 154.106. TRANSFER OF BUSINESS OWNERSHIP. (a) A permit holder shall notify the department and either the depository of the money held under Subchapter F or the issuer of insurance policy funding contracts under Subchapter E of a contract to transfer ownership of the permit holder's business or a transfer of 25 percent or more of the stock or other ownership or membership interest of the business in a single transaction. The notice must be given:

(1) in the case of a voluntary transfer, not later than the seventh day after the date the contract for transfer is executed; or

(2) in the case of an involuntary transfer, not later than the first business day after the date the permit holder receives notice of the impending foreclosure or other involuntary transfer.

(b) If the proposed transferee will own 51 percent or more of the business and is not a permit holder, the proposed transferee shall file an application for a permit with the department in accordance with this subchapter. If the application is complete, the commissioner shall approve or deny the application before the 16th day after the date the application was received. The transfer of prepaid funeral benefits contracts of the permit holder that is the transferor may not occur until after the date a permit is issued to the applicant that is the transferee.

(c) If the commissioner denies the application, the applicant may request a hearing not later than the 15th day after the date on which notice of the determination is hand-delivered or the notice is mailed; whichever date is earlier.

SECTION 2. Section 154.107, Finance Code, is amended to read as follows:
Sec. 154.107. REQUIRED RENEWAL FOR [CERTAIN] SELLERS. (a) A seller that has outstanding contracts shall renew the seller's permit until the contracts are fully discharged.

(b) A seller may renew the seller's permit as an unrestricted permit if the seller:

(1) wishes to continue to sell prepaid funeral benefits; and

(2) demonstrates to the commissioner that the seller continues to meet the qualifications and satisfy the requirements that apply to an applicant for a permit.

(c) A seller must renew the seller's permit as a restricted permit if the seller:

(1) cannot demonstrate to the commissioner that the seller continues to meet the qualifications and satisfy the requirements that apply to an applicant for a permit; or

(2) no longer wishes to sell prepaid funeral benefits.

(d) A seller that holds a restricted permit may not sell prepaid funeral benefits during the period a restricted permit is in effect. A contract entered into by a seller that at the time the contract is entered into holds a restricted permit is void and unenforceable and is not eligible for payment from a guaranty fund established under this chapter.

SECTION 3. Subsection (a), Section 154.161, Finance Code, is amended to read as follows:
(a) The funeral provider under a prepaid funeral benefits contract subject to this chapter shall:

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

(2) after the death of the contract beneficiary:
(A) deliver the contracted funeral merchandise and services and cash advance items required under the contract, subject to Section 154.1551;

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

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

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

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

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

(B) promptly deliver the records that verify contract performance to the seller, including the final at-need contract, the certificate of performance, and the reconciliations required under Subdivision (2);

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

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

(E) inform each seller with which the funeral provider has an outstanding contract of any closure of the provider's funeral establishments not later than the 15th day after the date of closure.

SECTION 4. Section 154.253, Finance Code, is amended to read as follows:

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

(1) in a financial institution that has its main office or a branch in this state in an interest-bearing restricted account insured by the federal government; or

(2) in trust with a financial institution that has its main office or a branch located in this state and is authorized to act as a fiduciary in this state, to be invested by the financial institution as trustee in accordance with this subchapter.

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

SECTION 5. Section 154.3595, Finance Code, is amended by adding Subsection (a-1) to read as follows:

(a-i) A permit holder to which this section applies shall notify each purchaser of an outstanding prepaid funeral benefits contract of any closure of the funeral provider named in the contract not later than the 90th day after the date of its receipt of notice of the closure.

SECTION 6. Subchapter I, Chapter 154, Finance Code, is amended by adding Section 154.400 to read as follows:

Sec. 154.400. INVESTIGATION AND SUBPOENA AUTHORITY. (a) If the commissioner has a reasonable suspicion of a misallocation or defalcation of prepaid funeral funds or an unauthorized sale of prepaid funeral benefits, the commissioner may conduct investigations as the commissioner considers necessary or appropriate to determine whether:

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

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

(b) The commissioner may issue a subpoena to compel the attendance and testimony of a person under oath or the production of documents related to an investigation conducted under Subsection (a). The subpoena may require attendance and production at the department's offices in Austin, Texas, or at another place the commissioner designates.

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

(d) If a person refuses to obey a subpoena, a district court in Travis County or the county in which the subpoena was served, on application by the commissioner, may issue an order requiring the person to appear before the commissioner and produce documents or give evidence regarding the matter under investigation.

SECTION 7. Subsection (a), Section 154.4061, Finance Code, is amended to read as follows:

(a) If, after a hearing conducted as provided by Chapter 2001, Government Code, the trier of fact finds that a violation of this chapter or a rule of the Finance Commission of Texas establishes a pattern of willful disregard for the requirements of this chapter or rules of the finance commission, the trier of fact may recommend to the commissioner that the maximum administrative penalty permitted under Section 154.406 be imposed on the person committing the violation or that the commissioner cancel or not renew the person's permit under this chapter.

SECTION 8. Section 154.407, Finance Code, is amended to read as follows:

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

(1) this chapter; or
(2) a final order of the commissioner or rule of the commission.

SECTION 9. Subsection (c), Section 154.4081, Finance Code, is amended to read as follows:

(c) The person named in the order may request in writing an opportunity for a hearing to show that the emergency order should be stayed. The written request for a hearing must be filed with the commissioner not later than the 30th day after the date on which the order is hand-delivered or the order is mailed, whichever date is earlier. On receipt of the request, the commissioner shall set a time for the hearing before the 22nd day after the date the commissioner received the request, unless extended at the request of the person named in the order.

SECTION 10. Subsection (b), Section 154.409, Finance Code, is amended to read as follows:

(b) The attorney general shall institute suit in the name of this state against a person who violates this chapter in a district court in Travis County or the county in which the violation occurred.

SECTION 11. Section 154.412, Finance Code, is amended by amending Subsection (c-1) and adding Subsection (h) to read as follows:

(c-1) An emergency order remains in effect unless stayed by the commissioner. The person named in the order may request in writing an opportunity for a hearing to show that the emergency order should be stayed. The written request for a hearing must be filed with the commissioner not later than the 30th day after the date on which the order is hand-delivered or the order is mailed, whichever date is earlier. On receipt of the request, the commissioner shall set a time 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. The hearing is an administrative hearing relating to the findings that support immediate effect of the order.

(h) On certification by the commissioner, a record seized as provided by Subsection (a) or a record created by or filed with the department in connection with a seizure is admissible as evidence in any proceeding before the commissioner without prior proof of its correctness and without other proof. The certified record or a certified copy of the record is prima facie evidence of the facts contained in the record. This subsection does not limit another provision of this subtitle or a provision of another law that provides for the admission of evidence or its evidentiary value.

SECTION 12. Section 154.414, Finance Code, is amended to read as follows:
Sec. 154.414. LIQUIDATION OF BUSINESS AND AFFAIRS OF PERSON FOLLOWING SEIZURE OF MONEY AND RECORDS. After an order issued under Section 154.412(a) becomes final and unappealable, the commissioner may petition a [the] district court in Travis County or in the county in which a person required to hold a permit under this chapter resides to request the issuance of an order to show cause why the business and affairs of that person should not be liquidated and a receiver appointed by the court for that purpose if:

(1) the person:

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

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

(C) allowed the person's permit to lapse or had the permit revoked under this chapter and did not make adequate provision for the administration of the money deposited with the person for prepaid funeral benefits contracts in accordance with the contract and applicable law, including rules; and

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

SECTION 13. Subchapter I, Chapter 154, Finance Code, is amended by adding Sections 154.415 and 154.416 to read as follows:

Sec. 154.415. PROHIBITION ORDER. (a) The commissioner may prohibit a person from participating in the business of prepaid funeral benefits sales if the commissioner determines from examination or other credible evidence that:

(1) the person:

(A) intentionally committed or participated in the commission of an act described by Section 154.401;

(B) violated a final cease and desist order issued by the department or another state agency related to the sale of prepaid funeral benefits; or

(C) made, or caused to be made, false entries in the records of a prepaid funeral benefits seller;

(2) because of the action by the person described by Subdivision (1):

(A) the purchaser or seller of prepaid funeral benefits has suffered or will probably suffer financial loss or expense, or other damage;

(B) the interests of the purchaser have been or could be prejudiced; or

(C) the person has received financial gain or other benefit by reason of the action, or likely would have if the action had not been discovered; and

(3) the action involves personal dishonesty on the part of the person.

(b) If the commissioner has grounds for action under Subsection (a) and finds that a prohibition order appears to be necessary and in the best interest of the public, the commissioner may serve a proposed prohibition order on a person alleged to have committed or participated in the action. The proposed order must:

(1) be personally delivered or mailed by registered or certified mail, return receipt requested;

(2) state with reasonable certainty the grounds for prohibition;

(3) state the effective date of the order, which may not be before the 21st day after the date the proposed order is personally delivered or mailed; and

(4) state the duration of the order, including whether the duration is perpetual.

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

(d) The order takes effect if the person against whom the proposed order is directed does not request a hearing in writing before the effective date. If the person does not request a hearing before the effective date, the order is final and not appealable as to that person.
(e) If the person requests a hearing as provided by Subsection (d), the hearing must be conducted as provided by Chapter 2001, Government Code, and commission rules. After the hearing, the commissioner shall issue or decline to issue the proposed order. The proposed order may be modified as necessary to conform to the findings at the hearing.

(f) An order issued under Subsection (e) is immediately final for purposes of enforcement and appeal. The order may be appealed as provided by Sections 31.202, 31.203, and 31.204.

Sec. 154.416. APPLICATION FOR RELEASE FROM PROHIBITION ORDER. (a) After the expiration of 10 years from the date of issuance, a person who is subject to a prohibition order issued under Section 154.415, regardless of the order’s stated duration or date of issuance, may apply to the commissioner to be released from the order.

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

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

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

SECTION 14. This Act takes effect September 1, 2013.

Passed the Senate on March 13, 2013: Yeas 31, Nays 0; passed the House on April 30, 2013: Yeas 122, Nays 17, two present not voting.

Approved May 14, 2013.

Effective September 1, 2013.

CHAPTER 40

S.B. No. 312

AN ACT
relating to the regulation of speech-language pathology and audiology and the fitting and dispensing of hearing instruments.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 401.057, Occupations Code, is amended to read as follows:

Sec. 401.057. HEARING CONSERVATION PROGRAM. This chapter does not prevent a person in an industrial setting from engaging in hearing testing as a part of a hearing conservation program in compliance with federal Occupational Safety and Health Administration regulations if the person is certified by an agency acceptable to the Occupational Safety and Health Administration.

SECTION 2. Subchapter E, Chapter 401, Occupations Code, is amended by adding Section 401.2022 to read as follows:

Sec. 401.2022. JOINT RULES FOR FITTING AND DISPENSING OF HEARING INSTRUMENTS BY TELEPRACTICE. With the assistance of the department, the board and the State Committee of Examiners in the Fitting and Dispensing of Hearing Instruments shall jointly adopt rules to establish requirements for the fitting and dispensing of hearing instruments by the use of telepractice.

SECTION 3. Subsection (a), Section 401.304, Occupations Code, is amended to read as follows:

(a) To be eligible for licensing as a speech-language pathologist or audiologist, an applicant must:

(1) if the application is for a license in:

(A) speech-language pathology, possess at least a master's degree with a major in at least one of the areas of communicative sciences or disorders from a program accredited by a national accrediting organization that is approved by the board and recognized by