

SUBJECT: Clarifying the definition of lawn crypts

COMMITTEE: Financial Institutions — committee substitute recommended

VOTE: 8 ayes — Marchant, Ehrhardt, Elkins, Giddings, Grusendorf, Patterson,
Smith, Solomons

0 nays

1 absent — Gutierrez

WITNESSES: For — Judy Roach, Texas Cemeteries Association; Gaylord Armstrong,
Texas Funeral Directors Association; Johnnie B. Rogers, Jr., Service
Corporation, Inc.

Against — None

On — Catherine Ghiglieri, Texas Department of Banking; Rob Schneider,
Consumers Union

BACKGROUND : Prepaid funeral contracts allow individuals to pay a funeral home for funeral
services or funeral merchandise in advance at a guaranteed contract price.
The Texas Banking Department, which regulates prepaid funeral services or
funeral-merchandise contracts, requires that a portion of the funds collected
from the sale of prearranged funerals or funeral merchandise be placed in
trust and prescribes how trust funds can be invested.

Funeral merchandise — items that are used at the funeral — include burial
containers in which caskets may be interred.

Cemetery items, usually offered for sale by cemetery operators, are not
subject to the prepaid funeral statute. These items are used for the actual
burial and can include lawn crypts, which are elaborate subsurface outer
containers equipped with drainage systems.

DIGEST: CSHB 1843 would define funeral merchandise and funeral services as items or goods sold on a preneed basis used in the preparation of funerals. The bill would specify that the term includes alternative or outer burial containers but not lawn crypts.

CSHB 1843 would amend the Health and Safety Code to establish construction and installment requirements for lawn crypts. Crypts would have to be constructed of concrete and steel or comparable material; installed on at least six inches of rock, gravel or other drainage material; and provide for water drainage. The top of the lawn crypt would have to be at least one and a half feet below ground and able to withstand the weight of the ground and equipment above it. Lawn crypts could be installed only in cemetery sections specially dedicated to their use and in units of 10 or more, unless the plot owner filed a written request.

CSHB 1843 also would allow the banking commissioner to waive certain investment limitations on prepaid funeral trust funds upon request from the funeral services firm so long as there was no unreasonable risk to the funds. The commissioner would have 60 days to approve or deny the request. Failing commission action within this time period, the request would be automatically approved. If the request was denied, the firm could request a hearing on the decision within 11 days.

CSHB would take effect September 1, 1997. The provisions on lawn crypts would apply to crypts installed after the effective date.

SUPPORTERS SAY: CSHB 1843 would prevent unscrupulous cemetery operators from selling an outer burial container as a lawn crypt. Currently, operators can call any concrete container a lawn crypt because the statute lacks clear, sufficient definition. Operators, already exempt from requirements of the prepaid services statute, can charge more money for a crypt that is nothing more than an outer burial container. Consumers may think they are getting the benefits of increased moisture and drainage control offered by a lawn crypt while in fact they are paying top dollar for just a concrete box.

CSHB 1843 would balance the needs of cemetery operators, who prefer multi-unit installations because of the heavy equipment needs, and consumers, who could still have individual units installed upon request.

CSHB 1843 also would benefit consumers and providers of prepaid funeral services by allowing the providers more flexibility in investing trust funds, subject to state oversight. Current restrictions on investments may not accurately reflect the realities of today's financial markets. Allowing trust funds to invest in additional sound instruments would help generate additional monies to cover administrative expenses and thereby keep the costs of these plans low.

OPPONENTS
SAY:

No apparent opposition.

NOTES:

The committee substitute would allow the banking commissioner an additional 30 days to approve or disapprove any written requests by a permit holder to waive an investment limitation, delineate construction requirements for crypts, and set an effective date of September 1, 1997.