

SUBJECT: Continuing Department of Banking, regulating prepaid funeral contracts

COMMITTEE: Financial Institutions — committee substitute recommended

VOTE: 7 ayes — Averitt, Denny, Hopson, Marchant, Menendez, Pitts, Wise

0 nays

2 absent — Solomons, Grusendorf

SENATE VOTE: On final passage, March 29 — voice vote

WITNESSES: For — *Registered but did not testify*: B.F. Carroll, Texas Cemeteries Association; W. Brown Claybar, Jim Garrison, and James Sullivan, Texas Funeral Directors Association; Ann Graham, Texas Bankers Association; Karen Neeley, Independent Bankers Association of Texas; Johnnie B. Rodgers, Jr., SCI

Against — None

On — Randall S. James, Texas Department of Banking; Rob Schneider, Consumers Union; *Registered but did not testify*: Everette Jobe and Stephanie Newberg, Texas Department of Banking; Jeremy B. Mazur, Sunset Advisory Commission

BACKGROUND: Created in 1923, the Department of Banking is responsible for chartering, supervising, and examining 370 state banks and 33 trust companies to insure the safety and soundness of the banking industry and financial system. It regulates 49 businesses that sell checks, oversees 84 foreign-currency transmission and exchange companies, and supervises 227 perpetual care cemeteries and 438 sellers of prepaid funeral contracts.

The department had about 144 full-time employees in fiscal 2000-01 and received appropriations of slightly more than \$18 million, derived almost entirely from fees assessed on the regulated businesses. These appropriations fund the following functions:

- ! processing applications for banks, trust companies, bank holding companies, check sellers, and currency exchanges;
- ! reviewing required filings by banks and trust companies;
- ! examining state banks every 18 months;
- ! licensing and annual examination of perpetual care cemeteries under Health and Safety Code, chapter 712;
- ! processing applications for permits to sell prepaid funeral services and conducting annual examinations of permittees under Finance Code, chapter 154;
- ! licensing and annual examination of currency exchanges for record-keeping requirements aimed at preventing money laundering; and
- ! licensing, supervision, and annual examination of businesses that sell “checks” such as money orders or travelers checks.

The department is subject to the Texas Sunset Act and will expire September 1, 2001, unless continued by the Legislature.

DIGEST:

CSSB 314 would continue the Department of Banking until September 1, 2013. It would revise provisions of the Finance and Insurance codes related to prepaid funeral services and would revise Health and Safety Code provisions in regard to perpetual care cemeteries.

Prepaid funeral services. The bill would set certain requirements for sales contracts used by companies that sell prepaid funeral services. For example, the contracts would have to be written in plain, easily understood language and printed in an easily readable font type and size. The department would be responsible for enforcing these requirements, for creating model contracts for the industry, and for formulating a standard disclosure that all contracts for prepaid funeral services would have to use. The disclosure would have to inform the consumer of what was being sold and under what circumstances the contract could be changed after the death of the contract’s beneficiary.

CSSB 314 would change the amount that a purchaser of prepaid funeral services was entitled to receive if the purchaser canceled the contract. In addition to the actual amount paid on the contract, minus certain expenses of the seller, the purchaser would be entitled to half of the earnings attributable to that money.

The banking commissioner could impose a penalty of up to \$1,000 on a holder of a prepaid funeral services permit who had engaged in a pattern of violations. The commissioner could consider the permittee's past record of violations, if any, in determining the penalty for current wrongdoing. The bill would specify that imposition of a penalty by the commissioner would be a contested case for purposes of appeal.

If a permit holder was found in a contested case proceeding to have a pattern of wilfully disregarding statutory requirements or the Finance Commission's rules for prepaid funeral service permittees, the trier of fact would have to recommend that the commissioner either impose the maximum penalty against the permit holder or cancel or not renew the permit. In considering the permit holder's record of past violations, the trier of fact could take into account violations that the permit holder had corrected within 31 days of being notified as required by the statute.

The banking commissioner could probate the suspension of any holder of a prepaid funeral services permit. During the probation, the permit holder could be required to make regular reports to the department on issues that were the subject of the suspension or probation, or the commissioner could limit the activities in which the permit holder could engage.

The bill would amend the Insurance Code to specify that those who sell only life insurance products that are functionally equivalent to prepaid funeral services would not be subject to the code's requirements for continuing education of insurance agents, other than the education necessary to apprise agents of new products related to prepaid funeral services.

Perpetual care cemeteries. CSSB 314 would authorize the Finance Commission to adopt rules to enforce statutory requirements for perpetual care cemeteries and to set and impose fees on licensees to cover the cost of regulating the industry. It also would modify the banking commissioner's statutory authority to examine perpetual care cemeteries by specifying what records the commissioner could review and for what grounds an examination could occur more often than annually.

The banking commissioner could impose a maximum administrative penalty of \$1,000 per day, instead of \$250 per day, for each violation by a perpetual

care cemetery. The commissioner could impose an administrative penalty on a person who violated statutory requirements or Finance Commission rules or who engaged in a pattern of such violations. Though contested case notice and procedures no longer would be required, the imposition of a penalty would be considered a contested case for purposes of appeal.

If a licensee was found in a contested case proceeding to have a pattern of wilfully disregarding the requirements or rules for permit holders, the trier of fact would have to recommend that the commissioner either impose the maximum penalty against the permit holder or cancel or not renew the permit. The fact finder could consider violations that the permit holder had corrected within 31 days of being notified.

CSSB 314 would add standard sunset provisions regarding conflicts of interest, standards of conduct, equal employment opportunity, information on the State Employee Incentive Program, and consumer complaints.

The bill would take effect September 1, 2001. Its provisions governing the terms of prepaid funeral service contracts would apply only to contracts executed on or after that date.

**SUPPORTERS
SAY:**

CSSB 314 would continue the Department of Banking so that it could continue to perform its essential functions. It regulates depository institutions and other financial services businesses to help guarantee the safety and soundness of banks, bank holding companies, and trust companies. It preserves the dual charter banking system and regulates financial services such as check sellers, currency exchanges, prepaid funeral services, and perpetual care cemeteries for the benefit of consumers.

This bill would enhance the department's authority in important ways. By adding the authority to impose administrative penalties on prepaid funeral service contractors and perpetual care cemeteries — especially for companies with a pattern of wilful disregard of the law — CSSB 314 would help promote compliance with laws that are designed to protect consumers and their investments.

Likewise, the bill would impose requirements on providers of prepaid funeral services to protect consumers. For instance, the plain-language contract

requirement would head off potentially fraudulent practices and would guarantee that consumers knew what they were buying, as well as informing them of their rights regarding the product. Requiring standard forms would protect not only consumers but also funeral services sellers, who could rely on those forms to avoid doubts about the clarity of their contract language.

CSSB 314 also would regulate better the cancellation of prepaid funeral contracts. Currently, the seller keeps the interest earned on the contract amount if the contract is canceled. The bill would reflect a compromise between the interests of consumers and the funeral services industry and would split the earnings evenly between them after accounting for certain expenses.

OPPONENTS
SAY:

CSSB 314 would not go far enough in protecting consumers. It would allow the funeral service business to keep 50 percent of the interest earned on a canceled contract. If the funeral service company has not yet provided any goods or services or incurred any costs, it should not be entitled to half of the interest earnings in addition to the service charges that the company could retain for expenses it incurred.

During the legislative process, several sound provisions recommended by the Sunset Advisory Commission have been removed from the original bill. One provision would have prohibited a seller of prepaid funeral services from requiring the purchaser to pay a finance charge if the contract was paid over time. Because the company is benefitting from the use of the consumer's money until the consumer's death, the company should not be able to charge the consumer interest for not giving it the use of all the money at once.

Another deleted provision would have required a funeral service company to refund to a consumer 50 percent of the earnings on the contract amount that were not used to pay for the funeral costs. This requirement would be fair because the funeral services provider is supposed to charge only the amount that should cover the cost of the funeral services, taking into account the return that the contract amount should earn before the beneficiary's death. Any remaining interest in the account would be a windfall to the seller, and part or all of it should be refunded to the consumer. The partial refund allowed by CSSB 314 would apply only to contracts canceled by the purchaser.

NOTES:

The committee substitute added the provision that would allow revocation of a death-care services permit if the permit holder had a pattern of wilfully disregarding the law. It added the provision that would authorize the Finance Commission to consider violations that were corrected timely when considering what penalty to impose, and it modified the provision regarding what documents could be examined. The substitute deleted the requirement that funeral services providers document the expenses they take from the earnings upon cancellation of the contract.