

- SUBJECT:** Extending coverage under the prepaid funeral contract guarantee fund
- COMMITTEE:** Pensions, Investments, and Financial Services — committee substitute recommended
- VOTE:** 9 ayes — Truitt, Anchia, C. Anderson, Creighton, Hernandez Luna, Legler, Nash, Orr, Veasey  
0 nays
- WITNESSES:** For — (*On original bill:*) (*Registered, but did not testify:* Johnnie B. Rogers, Service Corporation International); (*On committee substitute:*) Jim Bates, Funeral Consumers Alliance; (*Registered, but did not testify:* Russell Allen, Texas Cemeteries Association; Matthew Emal, Service Corporation International)  
  
Against — None  
  
On — (*Registered, but did not testify:* Stephanie Newberg, Texas Department of Banking)
- BACKGROUND:** The Texas Department of Banking maintains the prepaid funeral guarantee fund to ensure that the obligations of prepaid funeral contracts are met. Prepaid funeral contracts can be funded through a trust or an insurance policy. A trust-funded prepaid funeral contract generally is sold by a funeral home, and a customer makes payments directly to this entity. If a funeral home closes, current law allows the guarantee fund to cover the cost of a funeral arranged by another provider. With an insurance-funded prepaid funeral contract, an individual completes an application for insurance with an insurer along with a prepaid funeral contract with a funeral home. If a funeral home goes out of business, the guarantee fund cannot be used to cover costs to a purchaser for insurance-funded contracts.
- DIGEST:** CSHB 3004 would allow the prepaid funeral guarantee fund to cover potential losses on an insurance-funded prepaid funeral contract if a funeral provider defaulted on the contract. The bill also would allow a portion of the guarantee fund, rather than the whole fund, to be deposited with the comptroller or with a financial institution.

CShB 3004 would require a permit holder that sold prepaid funeral services but was unaffiliated with a funeral home to make a reasonable effort to find a comparable substitute funeral provider if the original provider could not fulfill the contract. The permit holder would have to identify and contact at least three funeral homes within the same community or service area as the defaulting funeral home. If the service area had less than three providers, the permit holder would have to contact at least three funeral homes within a 50-mile radius of the defaulting funeral home.

If a permit holder could not locate a funeral home that could deliver a comparable service to the purchaser, the permit holder would have to inform the guarantee fund advisory council of all the outstanding prepaid funeral contracts to which the funeral home was a party, the circumstances that caused the funeral home to default, and any attempts made by the permit holder to address the default with the funeral home. The permit holder also would have to provide the council with information on the efforts made to find a substitute funeral home, including:

- the name and location of each funeral home contacted;
- the terms offered to the potential substitute funeral home; and
- the terms of any counter-offer made by a substitute funeral home.

The permit holder would have to cooperate with the Texas Department of Banking and the advisory council to find a substitute funeral home and comply with any reasonable request, including negotiating with alternative funeral homes or communicating with a purchaser. These changes would only affect prepaid funeral policies sold on or after the effective date of the bill.

CShB 3004 also would change the composition of the advisory council by removing the attorney general and allow the council to meet by conference call, videoconference, or other teleconferencing equipment as long as the council complied with the open-meeting requirements.

The bill would take immediate effect if finally passed by a two-thirds record vote of the membership of each house. Otherwise, it would take effect September 1, 2011.

SUPPORTERS  
SAY:

CSHB 3004 would prevent customers in Texas from having to pay more than once for their own funeral. In the past, an individual would typically prepay for funeral services directly with a funeral home, locking in the price and all of the services to be provided. It is now common for prepaid funeral packages to be sold by insurance companies, which are completely separate from the funeral home.

An individual who invests in a prepaid funeral through an insurance provider must sign two contracts, one that locks in the costs and another that designates a funeral home and specifies the goods and services that will be provided. Under current law, the guarantee fund will cover the cost of services, but cannot guarantee that the same package for the goods and services will be available at the contracted price if a funeral home goes out of business. Some consumers may not know that a funeral home closes until the time arrives to claim their prepaid services. As a result, families must locate a new funeral home and renegotiate the contract upon the death of a loved one. This is often more expensive because costs have risen since the original purchase of the service, and families do not have the time or the right frame of mind to negotiate a similar price.

CSHB 3004 would address this problem by adding protections that would require those selling these products to assist customers in identifying comparable alternative funeral arrangements. It also would allow the guarantee fund to cover additional expenses faced by families in this situation. Recently, the funeral chain National Prearranged Services collapsed before the contracts of more than 39,000 Texans were fulfilled. There were instances in which a new funeral home was unable to honor the prepaid contract. Since the guarantee fund could not pay the difference in price, many families were left paying out of pocket.

The Texas Department of Banking handles the complaints of individuals concerning prepaid funeral contracts. By requiring permit holders to maintain records on funeral providers and interact with their prepaid funeral customers, the department's burden could be reduced, saving precious time and limited resources. The reporting requirements for permit holders could encourage these agents to be more cautious about entering into prepaid funeral contracts with potential bad actors in the funeral provider industry.

OPPONENTS  
SAY:

By expanding eligibility under the guarantee fund, this bill would increase claims, which could harm the solvency of the fund if a large funeral home filed for bankruptcy. Large funeral homes provide lower prices to generate more business. Individuals who purchase a prepaid funeral contract through these providers generally pay less for the insurance policy because the large funeral home could absorb the costs by operating with a larger volume. If the large funeral home were to close, it would be difficult to find an alternative funeral provider to step in and provide a comparable service for the same price. Under this scenario, many more customers could make claims, which could jeopardize the financial structure of the guarantee fund.

The data collection process required by permit holders under CSHB 3004 could be fairly onerous if a large funeral provider operating in many communities closed. The prepaid funeral industry is fairly competitive, and there are many large providers in Texas. These funeral providers often have a corporate office in one city and contract with permit holders who sell prepaid funerals in another community. While permit holders should do their best to manage the difficult situations faced by their clients if a funeral home closes, it would be difficult to balance this with the requirement to track and report data on client outcomes along with the additional information on the defaulting funeral provider.

OTHER  
OPPONENTS  
SAY:

While CSHB 3004 would help to protect consumers by ensuring that they receive proper assistance by their seller in finding an alternative funeral home, it should provide even stronger assurances that a customer would receive the same funeral services stipulated in the contract at no additional cost. In current form, the bill would provide terms that would permit a consumer in these circumstances to seek reimbursement from the guarantee fund, but the bill would not guarantee that a consumer would receive the full value of the services outlined in the original contract if another funeral home became involved.

NOTES:

The original version of the bill included a provision that would have required permit holders that sold and administered prepaid funeral products to assist customers if the funeral home listed under the contract closed, while the committee substitute would require the permit holder who administered a prepaid funeral benefit to assist customers under these conditions.

The Legislative Budget Board fiscal note anticipates that the bill would have no fiscal impact to the state. The analysis did not consider the costs for the Department of Banking because fiscal impacts for this agency would be realized outside of the treasury since the agency is self-directed and semi-independent.

The companion bill, SB 1166 by Carona, passed the Senate by 31-0 on the Local and Uncontested Calendar on March 31 and was referred to the Pensions, Investments, and Financial Services Committee on April 11.