

- SUBJECT:** Regulating prepaid funeral benefits contracts
- COMMITTEE:** Investments and Financial Services — committee substitute recommended
- VOTE:** 7 ayes — Villarreal, Flynn, Anderson, Burkett, Laubenberg, Longoria, Phillips
0 nays
- WITNESSES:** For — Jim Bates, Funeral Consumers Alliance of Texas (*Registered but did not testify*: Matthew Emal, Service Corporation International; Bradford Shields, Texas Cemetery Association)
Against — None
On — (*Registered, but did not testify*: Stephanie Newberg, Texas Department of Banking)
- BACKGROUND:** Finance Code, sec. 154 gives the Texas Department of Banking the authority to regulate prepaid funeral services.
- DIGEST:** **Investigation and subpoena authority.** CSHB 1489 would allow the banking commissioner of Texas (commissioner) to conduct an investigation and issue subpoenas on reasonable suspicion of misallocation or embezzlement of prepaid funeral funds or unauthorized sale of prepaid funeral benefits. The commissioner’s subpoena could require a person to attend a hearing, testify under oath, and produce documents in either Austin, Texas or another location. A district court in Travis or another county could issue subpoena orders, on application of the commissioner, if a person refused to obey the subpoena.
Prohibition orders. The commissioner could prohibit a person from participating in the prepaid funeral business if the person committed or participated in making or attempting to make an illegal contract, or engaged in fraud, deception, misrepresentation, or another dishonest practice in the sale of a contract. The commissioner also could prohibit a person from the business if the person violated a cease-and-desist order, made false record entries, received financial gain by violating a provision, or as a result of any those actions caused a purchaser to suffer financial

loss or have diminished interests in the sale.

The commissioner would have to deliver a prohibition order directly or by certified mail and state the grounds for the order, effective dates, and duration of the order. The commissioner could make the order perpetual, effective for a specific time period, or impose other conditions in the order.

The prohibition order would take effect and be final if the person named in the order did not request a hearing in writing before the effective date. If the person requested a hearing, the commissioner would conduct a hearing according to statutory rules and thereafter issue or decline to issue the proposed order, which would be immediately final with regard to enforcement and appeal. The order could be appealed according to general provisions of the Finance Code.

A person subject to a prohibition order could apply under oath to the commissioner to be released from the order after 10 years from the date of its issuance, which the commissioner would have the discretion to approve or deny.

Transfer, sale, or default of a business. CSHB 1489 would require a permit holder transferring 25 percent or more of the ownership to notify the banking department and either the depository of money held or the issuer of insurance funding contracts of the change within seven days of a voluntary transfer and one business day for an involuntary transfer.

The new owner would have to apply for a permit from the department if the owner obtained 51 percent or more of the business. If the commissioner denied the application, the applicant could request a hearing no later than 15 days after notification.

A seller of prepaid funeral benefits would have to notify purchasers of an outstanding contract if the funeral provider named in the contract defaulted no later than 90 days after notification of closure.

Permit renewal. CSHB 1489 would require anyone who sells prepaid funeral contracts to renew the sales permit so long as the seller had outstanding contracts. A seller could renew an unrestricted sales permit if the seller wanted to continue selling prepaid funeral benefits and demonstrated continued compliance with statutory qualifications.

A seller would receive a restricted permit if the seller could not demonstrate continued compliance with statutory qualifications or no longer wished to sell prepaid funeral benefits. A seller with a restricted license could not sell prepaid funeral benefits during the time the permit was restricted and any contract sold under a restricted permit would be void.

General requirements. A person named in an emergency order would have to file a written hearing request with the commissioner within 30 days of the order being mailed or delivered.

The attorney general would be able to institute a suit against a person that violated provisions governing prepaid funeral benefits in a district court in Travis County.

The commissioner could use any information obtained in the seizure of fund accounts and records as evidence in a proceeding.

Collected deposits. CSHB 1489 would require money collected as a deposit for a prepaid funeral service to be deposited in a restricted account carried by the funeral provider with the words "prepaid funeral benefits" or "pre-need funeral benefits."

Funeral providers. CSHB 1489 would require funeral providers to notify sellers of prepaid funeral benefits with an outstanding contract of its closure no later than 15 days after the closure.

The bill would take effect September 1, 2013.

**SUPPORTERS
SAY:**

HB 1489 would protect consumers by providing the banking commissioner the proper authority to investigate fraud claims of an industry it already regulates and permits. In fiscal 2012, 394 companies or individuals held permits to sell prepaid funeral benefits, and the value of the contracts monitored by the department was more than \$3.2 billion. This bill would give the department the tools it needs to protect consumers, often the elderly, in this fast-growing business.

The commissioner often receives suspicious activity reports (SAR) on funeral brokers or unlicensed operators selling funeral benefits but does not have the authority to investigate these SARs as it does for banks and

money service businesses. The bill would give the commissioner the proper authority to follow up on significant suspicion of fraud.

Those concerned that the commissioner would have too much authority to investigate should recognize that investigations require a reasonable suspicion of fraud, not just a complaint. The commissioner already has this authority to investigate banks and money service organizations suspected of fraud and needs the same authority to quickly resolve a fraud allegation instead of going through a district attorney. Also, these claims are often too small for a consumer to hire an attorney and file a personal claim. The industry, consumer groups, and the banking department agree that the bill would give the commissioner the proper investigative authority to target bad actors.

**OPPONENTS
SAY:**

CSHB 1489 would give the commissioner too much investigative authority that could burden businesses with record requests and deny them due process. If there's suspicion of major fraud, there are other ways for consumers to report it and other ways for the banking commission to obtain records.

NOTES:

The companion bill, SB 297 by Carona, was passed by the Senate by a vote of 31-0 on March 13. It was reported favorably by the House Investments and Financial Services Committee on April 22 and has been sent to the House Local and Consent Calendars Committee.

The committee substitute differs from the bill as filed in that it would:

- include a provision that would require the commissioner to have a reasonable suspicion of fraud or embezzlement to conduct an investigation;
- give the person named in an emergency order 30 days to request a hearing, rather than the 15 days in the filed bill;
- make evidence seized by the commissioner admissible as evidence in a proceeding before the commissioner;
- include the procedures that the commissioner would follow if a person named in a prohibition order requested a hearing and the procedure for appealing an issued prohibition order.