

## BILL ANALYSIS

Senate Research Center  
77R1068 DWS-D

S.B. 314  
By: Sibley  
Business & Commerce  
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As Filed

### DIGEST AND PURPOSE

Periodically, state agencies undergo a review by the Sunset Advisory Commission. As proposed, S.B. 314 continues the Texas Department of Banking for 12 years and makes statutory changes recommended by the Sunset Advisory Commission following its review of that department.

### RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Finance Commission of Texas in SECTIONS 6, and 13 (Sections 154.151, and 712.008, Finance Code) of this bill.

### SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 12.107, Finance Code, as follows: (a) Defines "Texas trade association."

(b) Prohibits a person from being a Texas Department of Banking (department) employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, the person or the person's spouse is an officer, employee, or paid consultant in an industry regulated by the department.

(c) Prohibits a person from acting as the general counsel to the department if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the department. Deletes language regarding officer or employee.

SECTION 2. Amends Section 12.108, Finance Code, as follows:

(b) Requires the department to maintain a file on each written complaint filed with the department. Requires the file to include certain information.

(c) Requires the department to provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the department's policies and procedures relating to complaint investigation and resolution.

(d) Requires the department, at least quarterly until final disposition of the complaint, to notify the person filing the complaint and each person who is a subject of the complaint of the status of the investigation unless the notice would jeopardize an undercover investigation. Deletes language regarding the banking commissioner.

SECTION 3. Amends Section 12.109, Finance Code, to provide that the office of banking commissioner is subject to Chapter 325 (Texas Sunset Act), Government Code. Provides that unless continued in existence as provided by that chapter, the office is abolished September 1, 2013, rather

than 2001.

SECTION 4. Chapter 12B, Finance Code, by adding Sections 12.111-12.113 as follows:

Sec. 12.111. **STANDARDS OF CONDUCT.** Requires the banking commissioner or the banking commissioner's designee to provide to agency employees, as often as necessary, information regarding the requirements for office or employment under this chapter, including information regarding a person's responsibilities under applicable laws relating to standards of conduct for state officers or employees.

Sec. 12.112. **EQUAL EMPLOYMENT OPPORTUNITY POLICY.** (a) Requires the banking commissioner or the banking commissioner's designee to prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin.

(b) Requires the policy statement to include certain information.

(c) Requires the policy statement to be updated annually, be reviewed by the state Commission on Human Rights for compliance with Subsection (b)(1) and be filed with the governor's office.

Sec. 12.113. **EMPLOYEE INCENTIVE PROGRAM.** Requires the banking commissioner or the banking commissioner's designee to provide to agency employees information and training on the benefits and methods of participation in the State Employee Incentive Program.

SECTION 5. Amends Section 154.109, Finance Code, by adding Subsection (d) to authorize the commissioner to place on probation a permit holder whose permit is suspended. Authorizes the commissioner, if a permit suspension is probated, to require the permit holder to report regularly to the department on matters that are the basis of the probation, or to limit its activities as prescribed by the commissioner.

SECTION 6. Amends Section 154.151, Finance Code, by adding Subsections (d) and (e) as follows:

(d) Requires that a sales contract for prepaid funeral benefits, whether in English or Spanish, be written in plain language designed to be easily understood by the average consumer. Requires the contract to be printed in an easily readable font and type size. Requires the department to provide model contracts complying with this subsection and to enforce this subsection.

(e) Requires the Finance Commission of Texas by rule to establish a standard disclosure that be included in each contract to inform purchasers of the goods and services that will be provided or excluded under the contract and the circumstances under which the contract may be modified after death of the beneficiary.

SECTION 7. Amends Section 154.154, Finance Code, as follows:

Sec. 154.154. New heading: **AGREEMENT TO PAY FINANCE CHARGE PROHIBITED.** Prohibits a prepaid funeral benefits contract from requiring the purchaser to pay the seller a finance charge. Deletes language regarding Chapter 345.

SECTION 8. Amends Section 154.155(d), Finance Code, to provide that the purchaser is entitled to receive the actual amount paid by the purchaser and half of all earnings attributable to that money, less the amount permitted to be retained as provided by Section 154.252, except as provided by Subsection (e) and by Section 154.205. Deletes language referencing section 154.254.

SECTION 9. Amends Section 154.252, Finance Code, to authorize the seller of a trust-funded prepaid funeral benefits contract to retain for the seller's use and benefit an amount not to exceed one-half of all money collected or paid until the seller has received an amount equal to the lesser of the amount spent by the seller on selling expenses, service costs, and general overhead, as determined and documented according to rules adopted by the Finance Commission of Texas, or 10 percent of the total amount the purchaser agreed to pay under the contract.

SECTION 10. Amends Chapter 154F, Finance Code, by adding Section 154.265, as follows:

Sec. 154.265. RETURN OF INTEREST FOLLOWING FUNERAL. Provides that on completion of the funeral service for a beneficiary named in a prepaid funeral benefits contract, the purchaser, or the decedent's estate if the decedent was the purchaser, is entitled to receive half of all earnings attributable to money paid to the seller under the contract, minus any amount of those earnings used to fulfill the obligations of the seller under the contract after all other money dedicated to fulfillment of those obligations was applied to that payment.

SECTION 11. Amends Section 154.406, Finance Code, as follows:

(A) Authorizes the commissioner, after notice and opportunity for hearing, the to impose an administrative penalty on a person who violates this chapter or a final order of the commissioner or rule of the Finance Commission of Texas and does not correct the violation before the 31st day after the date the person receives written notice of the violation from the department, or engages in a pattern of violations, as determined by the commissioner, including violations corrected as provided by Subdivision (1).

(c) Requires the commissioner, in determining the amount of the penalty, to consider the seriousness of the violation, the person's history of violations, including violations corrected as provided by Subsection (a)(1), and the person's good faith in attempting to comply with this chapter.

(d) Provides that the imposition of a penalty under this section is subject to judicial review as a contested case under Chapter 2001 (Administrative Procedure), Government Code.

SECTION 12. Amends Section 345.003(b), Finance Code, to redefine "services."

SECTION 13. Amends Chapter 712A, Health and Safety Code, by adding Section 712.008 as follows:

Sec. 712.008. RULES. Authorizes the Finance Commission of Texas to adopt rules to enforce and administer this chapter.

SECTION 14. Amends Section 712.044, Health and Safety Code, by deleting language which limited annual examinations of a corporation to the records to the corporations fund.

SECTION 15. Amends Sections 712.0441(a)-(c), Health and Safety Code, as follows:

(a) Authorizes the commissioner, after notice and opportunity for hearing, to impose an administrative penalty on a person who violates this chapter or a final order of the commissioner or rule of the Finance Commission of Texas and does not correct the violation before the 31st day after the date the person receives written notice of the violation from the banking department, or engages in a pattern of violations, as determined by the commissioner, including violations corrected as provided by this section.

(b) Prohibits the amount of the penalty for each violation from exceeding \$1,000 for each day

the violation occurs.

(c) Requires the commissioner, in determining the amount of the penalty, to consider the seriousness of the violation, the person's history of violations, including violations corrected as provided by this section, and the person's good faith in attempting to comply with this chapter. Provides that the imposition of a penalty under this section is subject to judicial review as a contested case under Chapter 2001, Government Code. Authorizes the commissioner to collect the penalty in the same manner that a money judgment is enforced in district court. Deletes language regarding civil penalties.

SECTION 16. Repealer: Section 154.254 (Prepaid Funeral Services), Finance Code.

SECTION 17. Effective date: September 1, 2001.