

## **BILL ANALYSIS**

C.S.H.B. 2393  
By: Flynn  
Financial Institutions  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Under current Texas law, limits exist on investment parameters for the Prepaid Funeral Benefits Trust. The current investment guidelines are not consistent with a growth-oriented investment objective that the prepaid funds should target. The allowable investment alternatives limit an investor from building a diversified portfolio that is capable of achieving real growth, while minimizing risk in a prudent and disciplined manner. While the limited investment instruments may incur lower volatility in the short-term, they impose a greater risk on the prepaid fund – insufficient growth of principal.

Most states follow the so-called “prudent investor” rule requiring trustees to use the judgment and care that one would exercise in managing their own financial affairs. The consumer is well-served when that standard is applied within the context of a corporate fiduciary. Texas, however, is among the states with restrictive investment language.

C.S.H.B. 2393 establishes an additional standard of care for a trustee that is administering assets held in a prepaid funeral benefits trust. C.S.H.B. 2393 also provides that the investments for the prepaid funeral benefits trust can be invested in accordance with the Texas Trust Code and particular, with the provisions of Chapter 117 of the Texas Trust Code, the Uniform Prudent Investor Act.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission in Section 3 of this bill.

### **ANALYSIS**

C.S.H.B. 2393 amends the Finance Code to establish the standard of duty of a trustee under the Texas Trust Code and provide for the trusts to be invested in accordance to the Uniform Prudent Investor Act. C.S.H.B. 2393 provides that in administering assets held in a prepaid funeral benefits trust, a trustee must consider two classes of people, including funeral providers or other providers entitled to payment and purchasers of or beneficiaries designated in prepaid funeral benefits contracts, who are entitled to receive a contracted funeral or have the right to cancel a contract. C.S.H.B. 2393 allows the commission to adopt reasonable rules to administer and clarify law regarding the investment and management of prepaid funeral benefits trusts, provided that the rules are consistent to the Uniform Prudent Investor Act. C.S.H.B. 2393 repeals Section 154.258(c), (d), and (e) and Section 154.259, of the Finance Code.

### **EFFECTIVE DATE**

September 1, 2007.

### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

C.S.H.B. 2393 modifies Section 154.255 by removing subsection (b). C.S.H.B. 2393 modifies the original by striking the word CARE and replacing it with the word DUTY. C.S.H.B. 2393 modifies the original bill with the following language: "described by Section 154.253(a)(2) shall be held to the standard of duty of a trustee under the Texas Trust Code (Subtitle B, Title 9, Property Code), provided that the provisions of the Texas Trust Code may not be expanded, restricted, eliminated, or otherwise altered by the provisions of the trust instrument in a manner

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that is inconsistent with the purposes, terms, distribution requirements, and other circumstances of a trust established under this chapter. In" C.S.H.B. 2393 removes the language "is subject to the standard provided in Texas Trust Code by Section 117.004(b), Property Code." C.S.H.B. 2393 modifies the original by adding "a trustee shall consider the trust beneficiaries to include the following two classes of persons to the extent of any beneficial interest: (1) funeral providers or other persons entitled to payment after delivering a contracted funeral for which funds have been deposited in trust; and (2) purchasers of or beneficiaries designated in prepaid funeral benefits contracts for which funds have been deposited in trust who: (A) are entitled to receive a contracted funeral; or (B) have the right to cancel a contract under Section 154.1555 if not waived under Section 154.156." C.S.H.B. 2393 modifies the original by inserting Section 2, which amends the heading of Section 154.258, Finance Code to state "INVESTMENT AND MANAGEMENT OF TRUST ASSETS." C.S.H.B. 2393 modifies the original by deleting Section 2 entirely and replacing that language with Section 3. C.S.H.B. 2393 repeals Section 154.258(c), (d), and (e) and Section 154.259, of the Finance Code. C.S.H.B. 2393 modifies the original by replacing "Section 3" with "Section 4" and replacing "Section 4" with "Section 5."