

BILL ANALYSIS

C.S.H.B. 3762

By: Flynn

Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, prepaid funeral benefits contracts are regulated by three different departments in an overlapping system, which causes and creates confusion and results in additional costs to the industry and consumers. This bill seeks to redesign the regulatory scheme governing prepaid funeral benefits contracts in a manner that promotes efficiency and effectiveness and that attempts to re-establish a positive business environment, while providing for fair and adequate regulation to protect consumers.

C.S.H.B. 3762 revises state law relating to the regulation of prepaid funeral benefits.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTIONS 2, 3, 8, and 28 of this bill.

ANALYSIS

C.S.H.B. 3762 amends the Finance Code to specify that, effective June 1, 2010, the Texas Department of Banking's authority to require a permit holder to submit an annual report applies to a permit holder that has outstanding contracts for prepaid funeral benefits; to require the report to be submitted in the form required by rule of the Finance Commission of Texas, rather than in the form required by the department; and to require such a permit holder to maintain record as required by rule of the commission, rather than as required by the department. The bill requires the department, effective June 1, 2010, to examine the records of each permit holder at least once every 18-month period, except that the department may examine a permit holder more frequently if the permit holder has received a uniform risk rating, under standards adopted by rule of the commission, that is less than satisfactory as a result of the permit holder's most recent examination or is subject to a formal enforcement proceeding or order by the banking commissioner of Texas or the banking commissioner determines in the exercise of discretion that additional examination is necessary to safeguard the interests of purchasers and beneficiaries and to efficiently enforce applicable law. The bill removes current provisions making the record subject to annual examination and to additional examinations, authorizing the department to examine or audit a record at any place and in any manner to protect the interests of purchasers or beneficiaries, and requiring the department to be given access to relevant records of each entity holding a deposit or premium for an annuity contract or a policy of insurance under the account and to any other record necessary to protect the interests of the beneficiaries. The bill authorizes the department to defer an examination for not more than six months if the banking commissioner determines that deferment is necessary for the efficient enforcement of applicable law. The bill authorizes any record to be maintained and provided for examination in electronic format if the record is reliable and can be retrieved in a timely manner. The bill requires the department, in consultation with the advisory committee established under the bill's provisions, to develop an examination manual that includes procedures intended to reduce the expense of examinations to the department and the permit holders.

C.S.H.B. 3762 requires a person, to obtain a permit to sell or to continue to sell insurance-funded prepaid funeral benefits contracts, to be one of the following: a funeral provider, an insurance company, or the insurance holding company for an insurance company if the insurance company does not have the authority under its domiciliary law to directly hold a permit, in addition to meeting other requirements. The bill also requires a person, to obtain a permit to sell or to continue to sell trust-funded prepaid funeral benefits contracts, to be a funeral provider, in addition to meeting other requirements.

C.S.H.B. 3762 requires a permit holder, in addition to notifying the department, to notify either the depository of the money held under a trust-funded prepaid funeral benefits or the issuer of insurance policy funding contracts of a contract to transfer ownership of the permit holder's business not later than the seventh day after the date the contract is executed and removes the requirement that notification be made by registered mail. The bill removes the deadline for a transferee who is not a permit holder to file an application for a permit after the transfer of business ownership and instead requires the commissioner, if the application of a proposed transferee to become a permit holder is complete, to approve or deny the application before the 16th day after the date the application was received and prohibits the transfer of prepaid funeral benefits contracts of the permit holder that is the transferor from occurring until after the date a permit is issued to the applicant that is the transferee. The bill repeals a provision relating to denying a permit and seizing money or records of a transferee who does not fulfill certain requirements.

C.S.H.B. 3762 adds to the grounds on which the banking commissioner by order may refuse to renew a permit a finding by the commissioner, by examination or other credible evidence, that the permit holder does not possess a qualification required by law for issuance of an initial permit.

C.S.H.B. 3762 requires a seller, directly or through the seller's designated agent, to provide an informational brochure to each potential purchaser of a prepaid funeral benefits contract describing the regulation of such contracts and the trust and insurance funding options available and including a reference to the department's website. The bill requires the department to approve a brochure before its use by a seller, develop a model brochure, and establish and maintain an Internet website that provides information to enable consumers to make informed decisions relating to the purchase of prepaid funeral benefits. The bill requires any sales literature or a website that offers or promotes the sale of prepaid funeral benefits contracts to the public to include a reference or link to the department's Internet website. The bill makes these pre-sale disclosure provisions applicable effective June 1, 2010.

C.S.H.B. 3762 requires a funeral provider, if a funeral provider designated in the contract to provide prepaid funeral benefits is not the licensed seller, to be a party to the contract, to agree in the contract to provide those benefits, and by signing the contract, to agree to discharge the responsibilities imposed on a funeral provider. The bill authorizes the commission by rule to prescribe a form for the standard disclosure that is designated to more closely conform to variations in sales contract forms that serve different purposes.

C.S.H.B. 3762 authorizes a purchaser of a prepaid funeral benefits contract to agree to advance funds for all or any portion of the estimated cost of cash advance items included in a prepaid funeral benefits contract, the actual cost of which are to be determined by existing prices at the time the items are delivered or provided in connection with at-need performance of the contracted funeral. The bill requires cash advance items included in a prepaid funeral benefits contract to be clearly grouped together and segregated from prepaid funeral benefits in a manner that will permit the average consumer to easily understand that cash advance items are not fixed or guaranteed in price and additional money may be required to fully pay for those items at the time of the funeral. The bill requires a seller to administer purchaser funds received in advance for cash advance items under a prepaid funeral benefits contract in the manner required by provisions governing the administration of money received for prepaid funeral benefits and the

payment of premiums collected for an insurance policy. The bill requires the funeral provider, after the death of the contract beneficiary, to apply the proportionate part of the trust or insurance policy proceeds received under the contract that is derived from advance payment of cash advance items to the current purchase price for the items. The bill authorizes the funeral provider, to the extent the proportionate part of contract proceeds is less than the current purchase price for the cash advance items, to collect additional money for the difference in exchange for delivering or providing the items as part of the contracted funeral. The bill requires the funeral provider, to the extent the proportionate part of contract proceeds is greater than the current purchase price for the cash advance items, to promptly refund the excess amount unless the amount is offset against other amounts due to the funeral provider in connection with the contracted funeral.

C.S.H.B. 3762 specifies that, under the general provisions for sales contracts, the provisions governing a contract cancellation apply to a seller of a trust-funded contract and that the cancellation of an insurance-funded contract by the purchaser is subject to the specific provisions governing insurance-funded prepaid funeral benefits and the amount payable on cancellation of a contract.

C.S.H.B. 3762 authorizes modification of the cash advance items, as well as of the funeral merchandise and funeral services selected in a fully paid prepaid funeral benefits contract, after the death of the beneficiary if the modification complies with certain statutory provisions or is otherwise agreed to in a writing signed by the seller or funeral provider and the person charged with the disposition of the beneficiary's remains under certain circumstances. The bill requires a modification of contracted funeral merchandise or service to comply with provisions capping a modification at 10 percent of the original purchase price of the contract, and requires the value attributed to any contracted funeral merchandise or service that is surrendered or exchanged in the modification to be computed on a comparable time-price basis with the price charged for substituted funeral merchandise or service provided as part of the modification. The bill requires a modification of cash advance items included in the contract to comply with provisions below. The bill authorizes a person charged with disposition of the beneficiary's remains to add, surrender, cancel, or modify any cash advance item included under the contract at the time the funeral is performed, provided that the value attributed to any contracted funeral merchandise or service that is surrendered in a modification may be applied to the unpaid cost of contracted or additional cash advance items and the funeral provider promptly refunds the proportionate part of the trust or insurance policy proceeds received under the contract that is derived from advance payment of a surrendered or canceled cash advance item to the extent the proceeds are not applied to the unpaid cost of additional cash advance items or additional funeral merchandise or services requested by the person charged with disposition of the beneficiary's remains.

C.S.H.B. 3762 removes the provision requiring a waiver of a purchaser's rights to cancel a contract be signed by the purchaser and the seller not earlier than the 15th day after the date of the purchase of the contract and requires such a waiver to comply with the plain language requirements for the form of a sales contract.

C.S.H.B. 3762 requires a seller to notify the department of any change in the designation of one or more agents not later than the 10th day after the change, rather than within the 10-day period before the change.

C.S.H.B. 3762 requires a funeral provider under a prepaid funeral benefits contract, in compliance with applicable law, to protect any nonpublic personal financial and health information of the purchaser and contract beneficiary in the possession of the funeral provider. The bill requires such a funeral provider, after the death of the contract beneficiary, to deliver the contracted funeral merchandise and services and cash advance items required under the contract; to prepare a written pre-need to at-need reconciliation to verify that the specified goods and services are delivered or performed for the agreed price and to promptly refund any contract overcharges that may be revealed by the reconciliation; to prepare a reconciliation of proceeds

applied to cash advance items, if advance payment of cash advance items was included in the contract; and to retain a copy of each reconciliation until the third anniversary of the date of service. The bill requires such a funeral provider, with respect to each prepaid funeral benefits contract for which the funeral provider is not also the seller, to sign the required reconciliations described above; promptly deliver the records that verify the contract performance to the seller, including the final at-need contract, the certificate of performance, and the required reconciliations; correct or explain any discrepancy in a reconciliation, if requested by the seller; and provide copies of any other records or documentation related to the offer, sale, and performance of the contract that are reasonably requested by the seller or the department, including records related to any required refund. The bill requires the seller to report to the department any discrepancy in a reconciliation that remains unresolved after a request for correction is made. The bill authorizes the trustee or insurance company to withhold payment to the funeral provider until each document the funeral provider is required to prepare and deliver to the seller, trustee, or insurance company is received, properly completed, and fully executed. The bill prohibits the department from requesting records or documentation relating to the offer, sale, and performance of the contract from a funeral provider unless the seller has notified the funeral provider of a discrepancy in a reconciliation and the discrepancy remains unresolved after a request for correction, the date of contract performance by the funeral provider is earlier than the third anniversary of the date of the initial request, and the department finds that the amount of the discrepancy exceeds five percent of the total contract price or that sufficient discrepancies exist to indicate the presence of an inappropriate or unlawful pattern or practice of contract performance and documentation by the funeral provider. The bill prohibits the department from requesting a seller to obtain records or documentation relating to the offer, sale, and performance of the contract from a funeral provider if the department would be prohibited from requesting the documentation directly from the funeral provider because of the prohibition under the bill's provisions.

C.S.H.B. 3762 requires an insurance policy used to fund prepaid funeral benefits to be written on a form approved by the Texas Department of Insurance (TDI); be issued by an insurance company authorized by TDI to engage in the business of insurance in Texas; and to contain the following statement on the cover page or otherwise within the policy or a rider to the policy: "This policy is issued to fund a prepaid funeral benefits contract subject to Chapter 154 of the Texas Finance Code. Cancellation of the prepaid funeral benefits contract does not automatically cancel this policy." The bill prohibits the aggregate initial face value of one or more insurance policies issued to fund a prepaid funeral benefits contract from exceeding the total contract price by more than five percent unless the purchaser receives a conspicuous written disclosure of the purpose and amount of the excess coverage and how the insurance benefit will be applied at contract maturity and consents in writing to the purchase of the excess coverage.

C.S.H.B. 3762 makes conforming changes to the requirements for the solicitation of insurance-funded benefits by specifying that a seller is prohibited from soliciting an individual's designation of prepaid funeral benefits to be paid from an insurance policy, unless the insurance policy meets the requirements for insurance policies established under the bill's provisions.

C.S.H.B. 3762 authorizes collection of the premiums for an insurance policy that funds prepaid funeral benefits only by a licensed insurance agent appointed by the insurance company issuing the policy and requires the premiums to be paid to the insurance company in accordance with the agency agreement between the insurance company and the agent. The bill establishes that the receipt of premiums by the insurance company's agent is considered receipt of premiums by the insurance company for purposes of continuing the policy in force. The bill removes provisions requiring a seller to remit to the insurance company the premiums for an insurance policy that funds prepaid funeral benefits not later than the 30th day after the date of collection and authorizing the department to require evidence of payment of premiums on an insurance policy used to create a fund to guarantee prepaid funeral benefits.

C.S.H.B. 3762 authorizes a purchaser of an insurance-funded prepaid funeral benefits contract to cancel the contract before maturity by giving written notice of cancellation to the permit holder. The bill requires the permit holder to maintain copies of the written notice of cancellation until the third anniversary of the date of receipt of notice. The bill establishes that cancellation of the contract does not automatically cancel the insurance policy funding the prepaid funeral benefits contract. The bill authorizes the cancellation of the insurance policy in accordance with the terms and conditions of the policy in exchange for the policy's cash surrender value and removes a provision entitling a purchaser who cancels the contract during the first year of the contract when payments required under the contract are current to receive the cash surrender value of the policy.

C.S.H.B. 3762 prohibits an assignment of a right to benefits under an insurance policy to the seller, the funeral provider, or an affiliated trustee from being made irrevocable unless the assignment is made solely to facilitate the eligibility of the purchaser under Title XIX, Social Security Act, or other law providing for a public assistance program, or unless the assignee is specifically prohibited from exercising any right under the policy except administration of the benefits. The bill establishes that an assignee is subject to a fiduciary duty to apply the insurance policy benefits as provided by the contract and provisions relating to prepaid funeral benefits.

C.S.H.B. 3762 amends provisions relating to payable benefits under an insurance policy by prohibiting a seller or funeral provider that has been assigned the benefits payable under an insurance policy funding prepaid funeral benefits from receiving payment of the benefits until the beneficiary named in the contract dies, the funeral service is completed, the funeral provider has completed the provider's obligations with respect to the contract, and the insurance company is presented with certification from the funeral provider attesting to the completion of the funeral service and of the provider's obligations and other documents as required by the insurance company to process and pay the claim. The bill requires the seller to maintain copies of the documentation submitted to the insurance company, rather than affidavits for examination by the department, and a copy the death certificate for examination by the department.

C.S.H.B. 3762 requires the banking commissioner, not later than November 1, 2009, to appoint an advisory committee to review and make recommendations regarding the technical procedures and processes employed by the department to regulate insurance-funded prepaid funeral benefits and monitor compliance of sellers of insurance-funded contracts. The bill establishes matters on which the committee is expected to make recommendations, the composition of the committee, and compensation for serving and expenses. The bill establishes that a recommendation of the committee does not supersede the regulatory authority of the commissioner or the rulemaking authority of the commission. The bill requires the banking commissioner to notify the commission of each recommendation of the committee and the reasons for the recommendations.

C.S.H.B. 3762 amends provisions relating to the withdrawal of money by the seller of a trust-funded funeral benefits contract on the death of a beneficiary by adding the funeral provider's completion of the provider's obligations with respect to the contract as another prerequisite to the seller's authority to withdraw an amount equal to the original contract amount paid by the purchaser and the earnings attributable to the contract, minus the amount retained for expenses, and by requiring the affidavits presented to the depository by the seller's officer or agent to attest to the completion of the funeral service and completion of the provider's obligation with respect to the contract.

C.S.H.B. 3762 requires the department, for purposes of claims and assessments, to maintain separate accounts within the fund for trust-funded contracts and insurance-funded contracts. The bill authorizes the advisory council to authorize borrowing between accounts to facilitate prompt and efficient resolution of claims against an account with an insufficient balance if the indebted account is obligated to pay interest at a rate that will reasonably compensate the lending account for lost earnings, required or planned assessments for the benefit of the indebted account are pending and sufficient to repay the lending account, and assessments collected for the benefit of

the indebted account are transferred to the lending account until the borrowed amount plus interest has been repaid.

C.S.H.B. 3762 requires the department to assess and collect from a seller not more than \$1 for each insurance-funded contract sold during each calendar year and to deposit the assessments in the insurance-funded contract account within the fund. The bill requires the department to stop assessing the required amounts described above when the amount in the insurance-funded contract account reaches \$1 million.

C.S.H.B. 3762 increases the number of members on the advisory council supervising the operation and maintenance of the guaranty fund by adding an extra representative of the prepaid funeral industry. The bill establishes that the two representatives represent trust-funded prepaid funeral benefits contract sellers and insurance-funded prepaid funeral benefits contracts sellers, respectively, and increases from two terms to four terms the term limits imposed on the two industry representatives and the consumer representative. The bill requires the banking commissioner to render a final decision, rather than cast the deciding vote, if there is a tie vote by members of the advisory council.

C.S.H.B. 3762 grants a member of the advisory council immunity from personal liability for damages arising from the member's official act or omission relating to the guaranty fund unless the act or omission is corrupt or malicious. The bill requires the attorney general to defend an action brought against a member of the advisory council from an official act or omission, including an action instituted after the defendant's service with the advisory council has terminated. The bill establishes that the attorney general is not required to defend a member of the advisory council against an action relating to the disposition of a filed claim or any issue other than the applicability or effect of the limitation on liability. The bill authorizes the banking commissioner on behalf of the fund, with the advice and consent of the advisory council, to contract with the attorney general for legal services not covered under provisions relating to limited liability.

C.S.H.B. 3762 clarifies the advisory council's authority to make assessments by authorizing the council, to pay a claim against the guaranty fund when the balance of the trust-funded contract account, rather than the fund, is insufficient to pay that claim, to assess each permit holder that has outstanding trust-funded contracts an amount based on the permit holder's proportionate share of the purchasers' deposits on all outstanding trust-funded contracts determined as of the end of the preceding calendar year. The bill requires the assessments to be deposited in the trust-funded contract account within the guaranty fund, rather than in the fund. The bill establishes that a seller whose permit is revoked or surrendered remains liable for any unpaid assessment made before the date of the revocation or surrender.

C.S.H.B. 3762 authorizes the advisory council, to pay a claim against the fund when the balance of the insurance-funded contract account is insufficient to pay that claim, to assess each permit holder that has outstanding insurance-funded contracts an amount based on the permit holder's proportionate share of all outstanding insurance-funded contracts determined as of the end of the preceding calendar year. The bill requires the assessments to be deposited in the insurance-funded contract account within the guaranty fund and administered by the department and the advisory council in accordance with commission rules. The bill establishes that an assessment described above is in addition to any required assessment on insurance-funded contracts. The bill establishes that a seller whose permit is revoked or surrendered remains liable for any unpaid assessment made before the date of the revocation or surrender.

C.S.H.B. 3762 establishes that the payment of a claim or expense from the guaranty fund is a matter of privilege and not of right, and that a person does not have a vested right in the fund as a beneficiary or otherwise. The bill authorizes a claim against the fund to be made by a purchaser of a prepaid funeral benefits contract, a purchaser's estate, a permit holder or funeral provider who assumes or performs a contract, or a claimant for the benefit of a group of purchasers or

prepaid funeral benefits contracts as part of a plan to arrange for another permit holder to assume the contract obligations. The bill authorizes an approved claim or expense relating to a trust-funded contract to be paid only from the fund's trust-funded contract account and an approved claim or expense relating to an insurance-funded contract to be paid only from the fund's insurance-funded contract account. The bill authorizes the guaranty fund to be used to pay a loss attributable to the failure or inability of a permit holder to perform the permit holder's obligations under a prepaid contract and the expenses of a plan to arrange for another permit holder to assume the obligations under a prepaid funeral benefits contract or a group of prepaid funeral benefits contracts if the banking commissioner finds, with the advice and consent of the advisory council, that the plan is reasonable and in the best interests of the contract beneficiaries. The bill also authorizes the guarantee fund to be used to pay administrative expenses related to servicing and handling outstanding prepaid funeral benefits contracts that have not been assumed by another permit holder, expenses for administering the receivership of an insolvent permit holder if the permit holder's assets are insufficient to pay those expenses, and expenses to employ and compensate a consultant, an agent, legal counsel, an accountant, and any other person appropriate and consistent with the purpose of the fund, as determined by the advisory council. The bill prohibits the fund from being required to pay any claimant an amount that exceeds the contractual obligations specified by the express written terms of the prepaid funeral benefits contract, including a claim based on marketing materials; a claim based on side letters or other documents that do not comply with the requirements of provisions governing prepaid funeral contracts; a claim based on misrepresentation of the benefits conferred by the contract or a funding insurance policy; or a claim for court costs, attorney's fees, penalties, or consequential or incidental damages. The bill prohibits a claim from being approved for a loss to the extent the claim is insured, bonded, or otherwise covered, protected, or reimbursed from other sources, including coverage provided by the Texas Life, Accident, Health, and Hospital Service Insurance Guaranty Association.

C.S.H.B. 3762 establishes that a person receiving a benefit from the guaranty fund, including a payment of or on account of a contractual obligation or provision of substitute or alternative prepaid funeral benefits, is considered to have assigned to the fund the rights under, and any cause of action relating to, the prepaid funeral benefits contract to the extent of the benefit received. The bill authorizes the banking commissioner to require a payee to execute a formal assignment of the person's rights and cause of action to the fund as a condition of receiving a right or benefit. The bill establishes that the guaranty fund retains all common law rights of subrogation and any other equitable or legal remedy that would have been available to a recipient of benefits from the fund with respect to a prepaid funeral benefits contract. The bill authorizes the banking commissioner, on behalf of the fund, to bring an action against any person and to employ and compensate a consultant, an agent, legal counsel, an accountant or any other person the banking commissioner considers appropriate to collect a subrogated account. The bill requires payment to be made from the appropriate account within the fund for these services. The bill requires any recovery of a subrogated amount to be deposited in the appropriate account within the fund.

C.S.H.B. 3762 authorizes the banking commissioner to issue an emergency cease and desist order that takes effect immediately if the banking commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a prepaid funeral benefits contract. The bill establishes that an emergency order remains in effect unless stayed by the banking commissioner. The bill authorizes the person named in the order to request in writing an opportunity for a hearing to show that the emergency order should be stayed. The bill requires the banking commissioner, on receipt of the request, to set a time for the hearing before the 22nd day after the date the banking commissioner received the request, unless extended at the request of the person named in the order. The bill establishes that the hearing described above is an administrative hearing relating to the validity of findings that support immediate effect of the order.

C.S.H.B. 3762 authorizes the banking commissioner to issue an order to seize accounts in which prepaid funeral funds, including earnings, may be held, rather than to seize prepaid funeral money and earnings where that money is. The bill specifies that the banking commissioner is authorized to issue an order to seize records that relate to the sale of prepaid funeral benefits if the commission finds that the person does not hold a permit or transferred the ownership of its business to another person who does not hold a permit, removing a further condition that the non-permit holder did not apply for a new permit before the 31st day after the date the transfer was completed or was denied a new permit. The bill specifies that an order to seize records relating to the sale of prepaid funeral benefits takes effect immediately, if the banking commissioner finds that the immediate and irreparable harm is threatened to the public, as well as to a beneficiary under a prepaid funeral benefits contract. The bill establishes that an emergency order to seize accounts or records remains in effect unless stayed by the banking commissioner. The bill authorizes the person named in the order to request in writing an opportunity for a hearing to show that the emergency order should be stayed. The bill requires the banking commissioner, on receipt of the request, to set a time before the 22nd day after the date the banking commissioner received the request, unless extended at the request of the person named in the order. The bill establishes that the hearing is an administrative hearing relating to the findings that support immediate effect of the order. The bill specifies that a nonemergency order takes effect as proposed unless the person named in the order requests a hearing not later than the 15th day after the date the order is mailed. The bill authorizes the banking commissioner, after the issuance of an order to seize accounts or records, to initiate an administrative claim for ancillary relief, including a claim for costs incurred in the administration, transfer, or other disposition of the seized assets and records or costs reasonably expected to be incurred in connection with the administration and performance of any outstanding prepaid funeral benefits contracts sold by a person subject to that order. The bill establishes that the remedy described above is not exclusive and does not limit the banking commissioner's discretion to seek an additional remedy.

C.S.H.B. 3762 amends the Insurance Code to establish that provisions relating to policy forms do not apply to the modification of a previously approved insurance policy form for the sole purpose of adding the following statement: "This policy is issued to fund a prepaid funeral benefits contract subject to Chapter 154 of the Texas Finance Code. Cancellation of the prepaid funeral benefits contract does not automatically cancel this policy."

C.S.H.B. 3762 defines "cash advance item," "insurance-funded contract," and "trust-funded contract," and redefines "funeral provider."

C.S.H.B. 3762 repeals Section 154.106(c), Finance Code.

EFFECTIVE DATE

Except as otherwise provided, September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 3762 differs from the original by redesigning the regulatory scheme governing pre-paid funeral benefits contracts through amendments of existing statutes and enactment of new statutes within the Finance Code and retaining regulatory oversight of such contracts in the offices of the Finance Commission of Texas, the Texas Department of Banking, the banking commissioner of Texas, and to the extent that such contracts are insurance-funded pre-paid funeral benefits contracts, the Texas Department of Insurance, whereas the original establishes a new regulatory scheme by adding a new subchapter to the chapter in the Occupations Code that regulates cemetery and crematory services, funeral directing, and embalming, and vesting general oversight authority over pre-paid funeral benefits contracts in the Funeral Services Commission. The new subchapter in the original includes general administrative and regulatory licensing provisions governing reporting; recordkeeping and examination of records; examination fees;

confidentiality of information; permitting requirements, permit application procedures, permit issuance, permit terms and renewals, and grounds for cancellation or suspension of permits and for refusal of a permit renewal; as well as industry-specific provisions applicable to pre-paid funeral benefits contracts governing contract cancellations and modifications, waivers of the right to cancel, contract performance and enforcement, training and education requirements for agents of permit holders, and various provisions applicable specifically to trust-funded pre-paid funeral benefits contracts and insurance-funded pre-paid funeral benefits contracts.

C.S.H.B. 3762 omits a provision in the original amending a definition of "seller" in the Finance Code that refers to the sale of prepaid funeral benefits contracts under the Occupations Code. The substitute adds a provision not in the original amending the Insurance Code to exempt the modification of a previously issued insurance policy form for the sole purpose of adding a specified statement from certain form requirements.

C.S.H.B. 3762 differs from the original by repealing Section 154.106(c), Finance Code, relating to denying a permit and seizing money or records of a transferee who does not fulfill certain requirements, rather than repealing the following provisions that are repealed in the original:

- Section 154.002(7), Finance Code, defining "insurance policy"
- Subchapters B, C, D, and I, Chapter 154, Finance Code, relating to powers and duties of the Texas Department of Banking, permits, sales contracts, and criminal penalties
- Sections 154.201, 154.202, 154.203, 154.205, 154.206, and 154.207, Finance Code, relating to insurance-funded pre-paid funeral benefits
- Section 651.159, Occupations Code, relating to a memorandum of understanding on prepaid funeral services
- Section 651.160, Occupations Code, relating to a memorandum of understanding on funeral establishment requirements