

BILL ANALYSIS

C.S.S.B. 1166

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Pensions, Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, Texans may arrange and fund their funerals in advance, and state law establishes a regulatory process to ensure that the funds are available to provide the funeral and that the funeral is performed as originally arranged. It has been observed that the prepaid funeral contract guaranty fund plays an important role in this process, although coverage currently extends only to the obligations of a licensed permit holder or the person selling a prepaid funeral benefits contract.

There is concern that the licensed permit holder or seller increasingly is not the funeral provider designated under such a contract, and a third party is often named as the funeral provider. It has been suggested that, if a third party funeral provider goes out of business, any new funeral provider selected by the purchaser, with or without the voluntary assistance of the seller, is not obligated to honor the original contract and typically will require payment of current prices for the contracted service and merchandise, eliminating an important protection and reason for arranging and funding a funeral in advance of need.

C.S.S.B. 1166 seeks to address this situation by extending coverage under the prepaid funeral contract guaranty fund to the obligations of a third party funeral provider and establishing certain related permit holder and fund responsibilities.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 1 of this bill.

ANALYSIS

C.S.S.B. 1166 amends the Finance Code to extend coverage under the prepaid funeral contract guaranty fund to the obligations of a third-party funeral provider under a prepaid funeral benefit contract and makes conforming changes related to a claim asserted by the Texas Department of Banking against a seller or provider, a claim by a purchaser or the purchaser's estate and certain other persons against the fund, and the authorized uses of the guaranty fund.

C.S.S.B. 1166 authorizes a deposit of the guaranty fund to be made in whole or in part, rather than only in its entirety, with the comptroller, with a federally insured financial institution having a main or branch office in Texas, or in trust with a financial institution having a main office or a branch office in Texas that is authorized to act as a fiduciary in Texas.

C.S.S.B. 1166 removes the attorney general or the attorney general's representative as a member of the guaranty fund advisory council. The bill authorizes the advisory council to hold an open or closed meeting by telephone conference call, videoconference, or other similar telecommunication method if notice is given for the meeting as for other meetings, the notice specifies a location for the meeting at which the public may attend, each part of the meeting that is required to be open to the public is audible to the public at the location specified in the notice

of the meeting, and the meeting is recorded by electronic or other means and the recording of each portion of the meeting that is required to be open to the public is made available to the public.

C.S.S.B. 1166 requires a permit holder that administers a prepaid funeral benefits contract for which the permit holder is not the funeral provider and there is an actual or anticipated failure or inability of the funeral provider to perform its obligations under the contract to make a reasonable effort to find a substitute funeral provider willing to assume the contractual obligations of the defaulting funeral provider. The bill describes a reasonable effort to include the following: identifying and contacting at least three funeral providers within the same community or geographic service area as the defaulting funeral provider; if at least three funeral providers do not exist within the same community or geographic service area, identifying and contacting at least three funeral providers within a 50-mile radius of the defaulting funeral provider; and, in either case, first contacting those funeral providers that the permit holder considers to have services and facilities comparable to those of the defaulting funeral provider. The bill requires a permit holder that is unable to locate a substitute funeral provider to submit information to the advisory council describing or identifying the following: all prepaid funeral benefits contracts to which the defaulting funeral provider is a party; to the extent known, the circumstances underlying the original provider's default and any attempt by the permit holder to address the default with the defaulting funeral provider; any effort by the permit holder to find a substitute funeral provider, including the location and identity of each contacted funeral provider, the terms offered to the funeral provider, and the terms of any counteroffer or other response made by the funeral provider; and other information known to the permit holder that the permit holder believes may be relevant or useful to the advisory council. The bill requires the permit holder to cooperate with the Texas Department of Banking and the advisory council in facilitating selection of a substitute funeral provider by complying with any reasonable request for additional information, assistance in negotiating with a potential substitute funeral provider, or assistance in communicating with a purchaser of an affected prepaid funeral benefits contract.

C.S.S.B. 1166 provides that the bill's provisions do not apply to a loss under a prepaid funeral benefits contract sold before the bill's effective date that arises from or relates to a default under the contract attributable to the funeral provider unless the funeral provider is also the contract seller or the bankruptcy, receivership, seizure, or other failure of the funeral provider unless the funeral provider is also the contract seller.

EFFECTIVE DATE

On passage, or, if the bill does not receive the necessary vote, September 1, 2011.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.S.B. 1166 differs from the original by making provisions relating to a permit holder's obligations in the event of a default by a funeral provider applicable to a permit holder that administers a prepaid funeral benefits contract for which the permit holder is not the funeral provider and there is an actual or anticipated failure or inability of the funeral provider to meet its contractual obligations, whereas the original makes those provisions applicable to a permit holder that sold and administers such a contract under those same conditions.