

## **BILL ANALYSIS**

C.S.H.B. 1489  
By: Flynn  
Investments & Financial Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Texas Department of Banking regulates prepaid funeral benefits contracts and issues permits to companies authorizing the sale of such benefits. Interested parties estimate that, for fiscal year 2012, nearly 400 companies or individuals held permits to sell prepaid funeral benefits contracts and that the value of those contracts exceeded \$3 billion. Due to the rapid growth in the industry, there are concerns that the potential for fraud has increased. The parties contend that it would be beneficial both to the industry and to consumers to add certain notification requirements regarding prepaid funeral benefits contracts, to clarify existing statutory provisions regarding administrative and court hearings, to provide for the issuance of subpoenas for investigations, and to restrict persons involved in fraudulent activity from participating in the sale of such contracts. C.S.H.B. 1489 seeks to address these issues by providing the department with tools to ensure sound business practices and to protect consumers of prepaid funeral benefits contracts from fraud.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 13 of this bill.

### **ANALYSIS**

C.S.H.B. 1489 amends the Finance Code to require a holder of a permit to sell, accept money or premiums for, or solicit contracts for prepaid funeral benefits or contracts or insurance policies to fund prepaid funeral benefits in Texas to notify the Texas Department of Banking and either the depository of the money held on a trust-funded prepaid funeral benefits contract or the issuer of insurance policy funding contracts of a transfer of 25 percent or more of the stock or other ownership or membership interest of the permit holder's business in a single transaction. The bill sets deadlines for such notice in the case of a voluntary transfer and in the case of an involuntary transfer. The bill requires a proposed transferee to file an application for a permit with the department if the transferee is not currently a permit holder and will own 51 percent or more of the business after the transfer, rather than requiring such a filing only if the transferee is not currently a permit holder. The bill authorizes the applicant, if the banking commissioner of Texas denies the application, to request a hearing not later than the 15th day after the date on which notice of the determination is hand-delivered or the notice is mailed, whichever date is earlier.

C.S.H.B. 1489 authorizes a seller of prepaid funeral benefits to renew the seller's permit as an unrestricted permit if the seller wishes to continue to sell prepaid funeral benefits and demonstrates to the commissioner that the seller continues to meet the qualifications and satisfy the requirements that apply to an applicant for a permit. The bill requires a seller to renew the seller's permit as a restricted permit if the seller cannot demonstrate to the commissioner that the seller continues to meet the qualifications and satisfy the requirements that apply to an applicant for a permit or if the seller no longer wishes to sell prepaid funeral benefits. The bill prohibits a seller that holds a restricted permit from selling prepaid funeral benefits during the period a

restricted permit is in effect and establishes that a contract entered into by a seller who, at the time the contract is entered, holds a restricted permit is void, unenforceable, and ineligible for payment from the guaranty fund for obligations under prepaid funeral benefits contracts.

C.S.H.B. 1489 requires a funeral provider under a prepaid funeral benefits contract to inform each seller with which the funeral provider has an outstanding contract of any closure of the provider's funeral establishments not later than the 15th day after the date of closure. The bill requires the applicable account in which money paid or collected on a trust-funded prepaid funeral benefits contract is deposited to include the words "prepaid funeral benefits" or "pre-need funeral benefits" in the account name. The bill requires a permit holder that administers a prepaid funeral benefits contract for which the permit holder is not the funeral provider and for which there is an actual or anticipated failure or inability of the funeral provider to perform its obligations under the contract to notify each purchaser of any closure of the funeral provider named in the purchaser's outstanding prepaid funeral benefits contract not later than the 90th day after the date of its receipt of notice of the closure.

C.S.H.B. 1489 authorizes the commissioner, if the commissioner has a reasonable suspicion of a misallocation or defalcation of prepaid funeral funds or of an unauthorized sale of prepaid funeral benefits, to conduct investigations as the commissioner considers necessary or appropriate to determine whether a misallocation or defalcation of prepaid funeral funds has occurred or whether an unauthorized sale of prepaid funeral benefits has occurred. The bill sets out provisions relating to a subpoena the commissioner is authorized to issue in such an investigation. The bill authorizes, rather than requires, a trier of fact to recommend to the commissioner that the maximum administrative penalty be imposed on a person committing a violation, or that the commissioner cancel or not renew a person's permit, if the trier of fact finds that the person's violation of statutory requirements relating to prepaid funeral services or of rules of the Finance Commission of Texas establishes a pattern of wilful disregard for such requirements and rules.

C.S.H.B. 1489 authorizes the commissioner to sue to enjoin a violation or threatened violation of statutory provisions relating to prepaid funeral services or of a final order of the commissioner or rule of the commission and requires the attorney general to institute in the name of the state against a person who violates such statutory provisions, in either a district court in Travis County or the county in which the violation occurred, rather than authorizing the commissioner to sue only in Travis County and requiring the attorney general to bring suit only in the county in which the violation occurred. The bill requires a written request for a hearing to show that an emergency cease and desist order or an emergency order to seize prepaid funeral accounts and records should be stayed to be filed with the commissioner not later than the 30th day after the date on which the order is hand-delivered or the order is mailed, whichever date is earlier. The bill establishes that a record seized or a record created by or filed with the department in connection with a seizure is admissible as evidence, on certification by the commissioner, in any proceeding before the commissioner without prior proof of its correctness and without other proof. The bill specifies that the certified record or a certified copy of the record is prima facie evidence of the facts contained in the record and that such admissibility does not limit statutory provisions relating to other financial businesses or another law providing for the admission of evidence or its evidentiary value. The bill authorizes the commissioner, after an order to seize prepaid funeral accounts and records becomes final and unappealable, to petition a district court in Travis County to request the issuance of an order to show specified cause.

C.S.H.B. 1489 specifies the actions for which the commissioner has the authority to prohibit a person from participating in the business of prepaid funeral benefits sales, authorizes the commissioner to serve a prohibition order on a person alleged to have committed or participated in such an action on finding that the proposed order appears necessary and in the best interest of the public, and sets out the requirements for the proposed order. The bill authorizes the commissioner to make the prohibition order perpetual or effective for a specific period, to probate the order, or to impose other conditions on the order. The bill establishes that a proposed

order takes effect and is final and not appealable as to that person if the person against whom the order is directed does not request a hearing in writing before the effective date.

C.S.H.B. 1489 requires a hearing to be conducted as provided by the Administrative Procedure Act and commission rules if the person requests the hearing in writing before the effective date of the proposed order. The bill requires the commissioner after the hearing to either issue or decline to issue a proposed order, and authorizes the proposed order to be modified as necessary to conform to the findings at the hearing. The bill establishes that such an order is immediately final for purposes of enforcement and appeal, and authorizes the order to be appealed as provided by statutory provisions relating to the appeal of a banking commissioner decision or order, an appeal to the finance commission, or a direct appeal to district court of a final order of the banking commissioner or of the finance commission.

C.S.H.B. 1489 authorizes a person who is subject to a prohibition order to apply to the commissioner to be released from the order after the expiration of 10 years from the date of issuance, regardless of the order's stated duration or date of issuance. The bill requires the application to be made under oath and in the form required by the commissioner and to be accompanied by any required fees. The bill authorizes the commissioner, in the exercise of discretion, to approve or deny such an application and specifies that the commissioner's decision regarding the application is final and not appealable.

### **EFFECTIVE DATE**

September 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 1489 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 154.106, Finance Code, is amended.	SECTION 1. Same as introduced version.
SECTION 2. Section 154.107, Finance Code, is amended.	SECTION 2. Same as introduced version.
SECTION 3. Section 154.161(a), Finance Code, is amended.	SECTION 3. Same as introduced version.
SECTION 4. Section 154.253, Finance Code, is amended.	SECTION 4. Same as introduced version.
SECTION 5. Section 154.3595, Finance Code, is amended.	SECTION 5. Same as introduced version.
SECTION 6. Subchapter I, Chapter 154, Finance Code, is amended by adding	SECTION 6. Subchapter I, Chapter 154, Finance Code, is amended by adding

Section 154.400 to read as follows:

Sec. 154.400. INVESTIGATION AND SUBPOENA AUTHORITY. (a) The commissioner may conduct investigations as the commissioner considers necessary or appropriate to determine whether:

- (1) a misallocation or defalcation of prepaid funeral funds has occurred; or
- (2) an unauthorized sale of prepaid funeral benefits has occurred.

(b) The commissioner may issue a subpoena to compel the attendance and testimony of a person under oath or the production of documents related to an investigation conducted under Subsection (a). The subpoena may require attendance and production at the department's offices in Austin, Texas, or at another place the commissioner designates.

(c) A subpoena issued under this section to a financial institution is not subject to Section 59.006.

(d) If a person refuses to obey a subpoena, a district court in Travis County or the county in which the subpoena was served, on application by the commissioner, may issue an order requiring the person to appear before the commissioner and produce documents or give evidence regarding the matter under investigation.

SECTION 7. Section 154.4061(a), Finance Code, is amended.

SECTION 8. Section 154.407, Finance Code, is amended.

SECTION 9. Section 154.4081(c), Finance Code, is amended to read as follows:

(c) The person named in the order may request in writing an opportunity for a hearing to show that the emergency order

Section 154.400 to read as follows:

Sec. 154.400. INVESTIGATION AND SUBPOENA AUTHORITY. (a) If the commissioner has a reasonable suspicion of a misallocation or defalcation of prepaid funeral funds or an unauthorized sale of prepaid funeral benefits, the commissioner may conduct investigations as the commissioner considers necessary or appropriate to determine whether:

- (1) a misallocation or defalcation of prepaid funeral funds has occurred; or
- (2) an unauthorized sale of prepaid funeral benefits has occurred.

(b) The commissioner may issue a subpoena to compel the attendance and testimony of a person under oath or the production of documents related to an investigation conducted under Subsection (a). The subpoena may require attendance and production at the department's offices in Austin, Texas, or at another place the commissioner designates.

(c) A subpoena issued under this section to a financial institution is not subject to Section 59.006.

(d) If a person refuses to obey a subpoena, a district court in Travis County or the county in which the subpoena was served, on application by the commissioner, may issue an order requiring the person to appear before the commissioner and produce documents or give evidence regarding the matter under investigation.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.

SECTION 9. Section 154.4081(c), Finance Code, is amended to read as follows:

(c) The person named in the order may request in writing an opportunity for a hearing to show that the emergency order

should be stayed. The written request for a hearing must be filed with the commissioner not later than the 15th day after the date on which the order is hand-delivered or the order is mailed, whichever date is earlier. On receipt of the request, the commissioner shall set a time for the hearing before the 22nd day after the date the commissioner received the request, unless extended at the request of the person named in the order.

SECTION 10. Section 154.409(b), Finance Code, is amended.

SECTION 11. Section 154.412, Finance Code, is amended by amending Subsection (c-1) and adding Subsection (h) to read as follows:

(c-1) An emergency order remains in effect unless stayed by the commissioner. The person named in the order may request in writing an opportunity for a hearing to show that the emergency order should be stayed. The written request for a hearing must be filed with the commissioner not later than the 15th day after the date on which the order is hand-delivered or the order is mailed, whichever date is earlier. On receipt of the request, the commissioner shall set a time before the 22nd day after the date the commissioner received the request, unless extended at the request of the person named in the order. The hearing is an administrative hearing relating to the findings that support immediate effect of the order.

(h) On certification by the commissioner, a record seized as provided by Subsection (a) or a record created by or filed with the department in connection with a seizure is admissible as evidence in any case without prior proof of its correctness and without other proof. The certified record or a certified copy of the record is prima facie evidence of the facts contained in the record. This subsection does not limit another provision of this subtitle or a provision of another law that provides for the admission of evidence or its evidentiary value.

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SECTION 11. Section 154.412, Finance Code, is amended by amending Subsection (c-1) and adding Subsection (h) to read as follows:

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(h) On certification by the commissioner, a record seized as provided by Subsection (a) or a record created by or filed with the department in connection with a seizure is admissible as evidence in any proceeding before the commissioner without prior proof of its correctness and without other proof. The certified record or a certified copy of the record is prima facie evidence of the facts contained in the record. This subsection does not limit another provision of this subtitle or a provision of another law that provides for the admission of evidence or its evidentiary value.

SECTION 12. Section 154.414, Finance Code, is amended.

SECTION 13. Subchapter I, Chapter 154, Finance Code, is amended by adding Sections 154.415 and 154.416 to read as follows:

Sec. 154.415. PROHIBITION ORDER. (a) The commissioner may prohibit a person from participating in the business of prepaid funeral benefits sales if the commissioner determines from examination or other credible evidence that:

(1) the person:

(A) intentionally committed or participated in the commission of an act described by Section 154.401;

(B) violated a final cease and desist order issued by the department or another state agency related to the sale of prepaid funeral benefits; or

(C) made, or caused to be made, false entries in the records of a prepaid funeral benefits seller;

(2) because of the action by the person described by Subdivision (1):

(A) the purchaser or seller of prepaid funeral benefits has suffered or will probably suffer financial loss or expense, or other damage;

(B) the interests of the purchaser have been or could be prejudiced; or

(C) the person has received financial gain or other benefit by reason of the action, or likely would have if the action had not been discovered; and

(3) the action involves personal dishonesty on the part of the person.

(b) If the commissioner has grounds for action under Subsection (a) and finds that a prohibition order appears to be necessary and in the best interest of the public, the commissioner may serve a proposed prohibition order on a person alleged to have committed or participated in the action.

The proposed order must:

(1) be personally delivered or mailed by registered or certified mail, return receipt requested;

(2) state with reasonable certainty the grounds for prohibition;

(3) state the effective date of the order,

SECTION 12. Same as introduced version.

SECTION 13. Subchapter I, Chapter 154, Finance Code, is amended by adding Sections 154.415 and 154.416 to read as follows:

Sec. 154.415. PROHIBITION ORDER. (a) The commissioner may prohibit a person from participating in the business of prepaid funeral benefits sales if the commissioner determines from examination or other credible evidence that:

(1) the person:

(A) intentionally committed or participated in the commission of an act described by Section 154.401;

(B) violated a final cease and desist order issued by the department or another state agency related to the sale of prepaid funeral benefits; or

(C) made, or caused to be made, false entries in the records of a prepaid funeral benefits seller;

(2) because of the action by the person described by Subdivision (1):

(A) the purchaser or seller of prepaid funeral benefits has suffered or will probably suffer financial loss or expense, or other damage;

(B) the interests of the purchaser have been or could be prejudiced; or

(C) the person has received financial gain or other benefit by reason of the action, or likely would have if the action had not been discovered; and

(3) the action involves personal dishonesty on the part of the person.

(b) If the commissioner has grounds for action under Subsection (a) and finds that a prohibition order appears to be necessary and in the best interest of the public, the commissioner may serve a proposed prohibition order on a person alleged to have committed or participated in the action.

The proposed order must:

(1) be personally delivered or mailed by registered or certified mail, return receipt requested;

(2) state with reasonable certainty the grounds for prohibition;

(3) state the effective date of the order,

which may not be before the 21st day after the date the proposed order is personally delivered or mailed; and

(4) state the duration of the order, including whether the duration is perpetual.

(c) The commissioner may make a prohibition order perpetual or effective for a specific period of time, may probate the order, or may impose other conditions on the order.

(d) The order takes effect if the person against whom the proposed order is directed does not request a hearing in writing before the effective date. After taking effect, the order is final and not appealable as to that person.

No equivalent provision.

No equivalent provision.

Sec. 154.416. APPLICATION FOR RELEASE FROM PROHIBITION ORDER. (a) After the expiration of 10 years from the date of issuance, a person who is subject to a prohibition order issued under Section 154.415, regardless of the order's stated duration or date of issuance, may apply to the commissioner to be released from the order.

(b) The application must be made under oath and in the form required by the commissioner. The application must be accompanied by any required fees.

(c) The commissioner, in the exercise of discretion, may approve or deny an application filed under this section.

which may not be before the 21st day after the date the proposed order is personally delivered or mailed; and

(4) state the duration of the order, including whether the duration is perpetual.

(c) The commissioner may make a prohibition order perpetual or effective for a specific period of time, may probate the order, or may impose other conditions on the order.

(d) The order takes effect if the person against whom the proposed order is directed does not request a hearing in writing before the effective date. If the person does not request a hearing before the effective date, the order is final and not appealable as to that person.

(e) If the person requests a hearing as provided by Subsection (d), the hearing must be conducted as provided by Chapter 2001, Government Code, and commission rules. After the hearing, the commissioner shall issue or decline to issue the proposed order. The proposed order may be modified as necessary to conform to the findings at the hearing.

(f) An order issued under Subsection (e) is immediately final for purposes of enforcement and appeal. The order may be appealed as provided by Sections 31.202, 31.203, and 31.204.

Sec. 154.416. APPLICATION FOR RELEASE FROM PROHIBITION ORDER. (a) After the expiration of 10 years from the date of issuance, a person who is subject to a prohibition order issued under Section 154.415, regardless of the order's stated duration or date of issuance, may apply to the commissioner to be released from the order.

(b) The application must be made under oath and in the form required by the commissioner. The application must be accompanied by any required fees.

(c) The commissioner, in the exercise of discretion, may approve or deny an application filed under this section.

(d) The commissioner's decision under Subsection (c) is final and not appealable.

SECTION 14. This Act takes effect September 1, 2013.

(d) The commissioner's decision under Subsection (c) is final and not appealable.

SECTION 14. Same as introduced version.