

BILL ANALYSIS

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S.B. 1166
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

A person may enter into a prepaid funeral benefits contract, which is an insurance contract intended to allow a person to make many of the difficult decisions involved in funeral planning, including providing for the expense of a funeral, in advance. The parties to a prepaid funeral benefits contract are the purchaser/policyholder and the insurer. A funeral home/cemetery is the third party beneficiary of the proceeds of the benefits contract, which are paid to the funeral home/cemetery after the death of the policyholder to cover costs associated with the policyholder's funeral. The funeral home/cemetery also acts as the insurer's agent for the purposes of filling out the contract and getting it to the appropriate insurer.

The Texas Department of Insurance (TDI) maintains guarantee funds for insurance companies, the purpose of which is to ensure that policyholders of participating insurers are protected and can be made whole in the event an insurer becomes insolvent. The guarantee funds are funded by the insurance companies covered by the guarantee fund. The Texas Department of Banking maintains a guarantee fund for insurers issuing prepaid funeral benefits contracts. Under current law, the prepaid funeral benefits guarantee fund protects policyholders from insurance company insolvency, but does not cover instances where a funeral home/cemetery may become insolvent. In these cases, the insurance company is required to locate a funeral home/cemetery that can provide the services covered under the benefits contract, and the costs associated with such a change can increase due to inflation.

S.B. 1166 would extend coverage of the prepaid funeral benefits guaranty fund to include defaulting funeral homes and cemeteries. S.B. 1166 further provides that the guaranty fund would cover increased costs to insurers resulting from inflation and a change in the funeral home/cemetery. The bill also clarifies where guaranty funds can be deposited, and would eliminate the attorney general as a member of the Guaranty Fund Advisory Council (council). It would additionally allow council meetings to be held telephonically.

As proposed, S.B. 1166 amends current law relating to prepaid funeral benefits contracts and the prepaid funeral contract guaranty fund.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to Finance Commission of Texas is modified in SECTION 1 (Section 154.351, Finance Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 154.351(a), Finance Code, to require the Finance Commission of Texas (finance commission) by rule to establish, and the Texas Department of Banking (TDB) to maintain, a fund to guarantee performance by sellers of prepaid funeral benefits contracts and funeral providers under those contracts of their obligations to purchasers.

SECTION 2. Amends Section 154.353, Finance Code, as follows:

Sec. 154.353. New heading: DEPOSIT OF FUND OR PORTION OF FUND. (a)
Authorizes the fund or a portion of the fund to be deposited:

(1) with the comptroller of public accounts (comptroller);

(2) with a federally insured financial institution; or

(3) in trust with a financial institution that has its main office or a branch in this state and is authorized to act as a fiduciary in this state.

(b) Requires the comptroller, if the fund or a portion of the fund is deposited with the comptroller, to manage the deposit as trustee of the money outside the state treasury.

SECTION 3. Amends Section 154.355, Finance Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Deletes existing text requiring the attorney general or the attorney general's representative to be a member of the advisory council charged with supervising the operation and maintenance of the fund (advisory committee).

(d) Authorizes the advisory council, notwithstanding Chapter 551 (Open Meetings), Government Code, or any other law, to hold an open or closed meeting by telephone conference call, videoconference, or other similar telecommunication method if:

(1) notice is given for the meeting as for other meetings;

(2) the notice specifies a location for the meeting at which the public may attend;

(3) 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

(4) 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.

SECTION 4. Amends Section 154.357, Finance Code, as follows:

Sec. 154.357. New heading: CLAIM AGAINST SELLER, FUNERAL PROVIDER, OR DEPOSITORY. Authorizes TDB to assert a claim against a seller, funeral provider or depository that commits a violation of this chapter that could result in a claim against the fund.

SECTION 5. Amends Section 154.358(b), Finance Code, to authorize a claim against the fund to be made by certain persons, including a claimant for the benefit of a group of purchasers of prepaid funeral benefits contracts as part of a plan to arrange for another permit holder or funeral provider to assume the contract obligations.

SECTION 6. Amends Section 154.359(a), Finance Code, as follows:

(a) Authorizes the fund, in addition to uses authorized by Section 153.354 (Use of Fund Earnings), to be used to pay:

(1) a loss attributable to the failure or inability of a permit holder or funeral provider to perform its obligations, rather than the inability of a permit holder or funeral provider to perform its permit obligations, under a prepaid funeral benefits contract;

(2) expenses of a plan to arrange for another permit holder or funeral providers to assume the obligations of the permit holder or funeral provider under a prepaid funeral benefits contract or a group of prepaid funeral benefits contracts if the Banking Commissioner of Texas finds, with the advice and consent of the

advisory council, that the plan is reasonable and in the best interests of the contract beneficiaries;

(3) administrative expenses related to servicing and handling outstanding prepaid funeral benefits contracts that have not been assumed by another permit holder, or the obligations under which have not been assumed by another funeral provider;

(4) expenses for administering the receivership of an insolvent permit holder or funder provider if the permit holder or funeral provider's assets are insufficient to pay those expenses; and

(5) 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.

SECTION 7. Amends Subchapter H, Chapter 154, Finance Code, by adding Section 154.3595, as follows:

Sec. 154.3595. **DEFAULT BY FUNERAL PROVIDER.** (a) Provides that this section applies to a permit holder that sold and administers a prepaid funeral benefits contract for which the permit holder is not the funder provider, and there is an actual or anticipated failure or inability of the funeral provider to perform its obligations under the contract.

(b) Requires a permit holder to which this section applies to make a reasonable effort to find a substitute funeral provider willing to assume the contractual obligations of the defaulting funeral provider. Provides that a reasonable effort includes:

(1) identifying and contacting at least three funeral providers within the same community or geographic service area as the defaulting funeral provider;

(2) if at least three funeral providers do not exist within the same community or geographic service area, indentifying and contacting at least three funeral providers within a 50-mile radius of the defaulting funeral provider; and

(3) for both Subdivisions (1) and (2), first contacting those funeral providers that the permit holder considers have services and facilities that are comparable to the defaulting funeral provider.

(c) Requires a permit holder that is unable to locate a substitute funeral provider as required by Subsection (b) to submit information to the advisory council describing or indentifying:

(1) all prepaid funeral benefits contracts to which the defaulting funeral provider is a party;

(2) to the extent known, the circumstances underlying the default by the original funeral provider and any attempt by the permit holder to address the default with the defaulting funeral provider;

(3) 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

(4) other information known to the permit holder that the permit holder believe may be relevant or useful to the advisory council.

(d) Requires the permit holder to cooperate with TDB and the advisory council in facilitating selection of a substitute funeral provider by complying with any reasonable request for:

- (1) additional information;
- (2) assistance in negotiating with a potential substitute funeral provider; or
- (3) assistance in communicating with a purchaser of an affected prepaid funeral benefits contract.

SECTION 8. Provides that the changes in law made by this Act to Subchapter H (Guaranty Fund), Chapter 154 (Prepaid Funeral Services), Finance Code, do not apply to a loss under a prepaid funeral benefits contract sold before the effective date of this Act that arises from or relates to the occurrence of one of the following events:

- (1) an event of default under the contract attributable to the funeral provider unless the funeral provider is also the contract seller; or
- (2) the bankruptcy, receivership, seizure, or other failure of the funeral provider unless the funeral provider is also the contract seller.

SECTION 9. Effective date: upon passage or September 1, 2011.