

Texas Department of Banking Testimony

Remarks to the Sunset Advisory Commission re: The Sunset Staff's report on the Funeral Service Commission, to the point that it applies to and affects the Department of Banking's activities in the supervision of Prepaid Funeral Contracts, and Perpetual Care Cemeteries

Date: December 12, 2000

Chairman Bosse and members of the Sunset Advisory Commission. For the record, I am Randall James, Banking Commissioner for Texas, and the Department of Banking is charged with the oversight of prepaid funeral contract (PFC) licensees and perpetual care cemeteries (PCC) in Texas. With me is Stephanie Newberg, my Deputy Commissioner who is responsible for these areas in the Department. She can answer the tough questions.

First of all, I would like to state that I appreciate working with the Sunset Advisory Committee staff, and I think they have diligently applied themselves to the task of learning the issues and reaching substantive findings.

As in my response to Mr. Joey Longley, Executive Director of the Sunset Advisory Commission, dated December 1, 2000, I concur with Sunset staff's findings on Issues 8 and 9, the two issues directly affecting the Department of Banking.

The Department of Banking has regulated PFC and PCC since the 1950s. We have approximately 11 people directly involved in these areas of supervision, before consideration of administrative support staff, attorneys, and others. About 8% to 10% of the Department's energy, resources and personnel, approximately \$720,000 to \$800,000 in appropriations are devoted to these functions. The thrust of the PFC laws relate to the sanctity of the purchasers' trusted prepaid funds so that these monies are available when needed. The PCC laws provide safeguards for funds collected as perpetual care to ensure that they are properly deposited and the income is used to maintain the cemetery into perpetuity.

Today, the department supervises approximately 440 PFC licensees that handle 840,000 contracts totaling approximately \$2.1 billion in purchaser funds and earnings – no small issue to Texas and its citizens. The Department also has some 227 PCC licensees, which is actually a very small percentage of the total number of cemeteries in the state of Texas. Trusted funds for these cemeteries are about \$157 million.

The Department of Banking works with both the Texas Department of Insurance and the Texas Funeral Service Commission in the overlapping areas of supervision and consumer complaints resolution. We have an existing interagency agreement, adopted by rule, that addresses the area of consumer complaint resolution and we try to continually improve this process.

My comments on the two Sunset issues relating to the Department are as follows:

Issue 8:

This Issue and Sunset staff's findings and recommendations relate to the statute's current provisions that concern consumer awareness and treatment.

- Issue 8.1 – Finance charges
The statute currently allows finance charges to be assessed by the sellers of PFCs. Obviously, no good or service has been delivered at the time the finance charge is assessed. The Office of Consumer Credit Commissioner reports that 73 PFC licensees are licensed to charge finance charges. This is 17% of the total number of PFC licensees. While this provision is available to all sellers, primarily the larger companies in the state are the only ones that exercise it.
- Issue 8.2 – Cancellation provision
The current statute allows the seller of PFCs to retain 10% of the principal and all earnings when a purchaser desires to cancel the contract because of relocation or for other reasons. Compared to the 1950s, people now move around and relocate more. The Sunset staff has reported that some 19 other states have laws providing for full cancellation refunds. A change of this provision would definitely be an enhanced benefit for the purchasing customer.
- Issue 8.3 – Excess Earnings at contract maturity
The next recommendation concerns refunding excess earnings at contract maturity. This is currently the practice of a limited number of licensees. It would also be an enhanced benefit for the purchasing consumer.
- Issue 8.4 – Plain Contracts
Recommendation 8.4 concerns plain language contracts. I wholeheartedly support plain language contracts, which would be more appropriate to the purchaser. It may also be beneficial to produce contracts in both English and Spanish. We must take the appropriate measures to ensure that the purchaser is fully aware of their agreement's provisions and fully understands the promises by the seller and themselves. Based on the inquiries we receive, consumers tend to believe they are acquiring, and in fact are being guaranteed, EVERYTHING for the funeral and burial when they purchase a PFC contract. However, this is not always the case. Contracts are not clear enough on these points, tending to be written in legalese more than not. In fact, a recent Attorney General's opinion states that the law does not absolutely require the purchaser/beneficiary be provided with everything they purchased, except for the method of disposition - either burial or cremation.
- Issue 9:
I agree with Sunset staff's recommendations for limited, but improved capacity in statute to address those problems that the department faces in its effective supervision of these areas. But I am not sure I need enforcement powers beyond what Sunset has

recommended. Our enforcement powers today include seizures of unlicensed activities' funds, as well as seizure capacity in those egregious situations that arise. I suspect that you will be hearing testimony that the Department should not have increased enforcement authorities in even these limited areas discussed. I would hope the industry understands, by the department's continued activities in recent years, that not only the mandate of the statute, but our goals as an agency are to ensure the sanctity of the trust funds and the accuracy of all the information related thereto. By doing so, the entire legal authorities and industry structure that allows PFCs and PCCs to operate in Texas is given credibility. Failing that mission is negative both to the industry and its customers.

Our lack of authority to adequately address repeat offenders, especially in the area of adequate financial record keeping of trust funds and any related expenses, is an exercise in futility for all of us. As you are aware, I work with banks, and you would not begin to tolerate a bank that could not produce accurate records of your account, or worse, continue the problem after you notified them. Nor would you long tolerate me failing to resolve a problem after you informed me to fix it. This change is needed. Secondly, continued and repeat violations of failure to timely deposit funds into the appropriate trust account is a problem that could easily lead to more serious losses to Texas citizens. The number of licensees that evidence repeat violations of law is sizable on a composite basis and effectively demeans the credibility of the legislative structure for the product. Surely the industry understands that practices need to improve, and violators should not need to be continually told of their offense. The Department's options are limited, especially compared to that which I am used to working with in the banking industry. Bank regulations offer a broad range of remedies to deal with different situations and assist in their improvement.

In the past, we have worked with the industry on the issues, and I am very willing to do so again, under the Legislature's direction.

Thank you, and I will be glad to respond to any questions the Commission members may have.