

SUBJECT: Changing statute related to the Texas Funeral Service Commission

COMMITTEE: Public Health — favorable, without amendment

VOTE: 10 ayes — Price, Sheffield, Arévalo, Burkett, Collier, Cortez, Guerra, Klick, Oliverson, Zedler

0 nays

1 absent — Coleman

WITNESSES: For — Bill Haley, Texas Funeral Directors Association; (*Registered, but did not testify*: Johnnie B. Rogers Jr, Service Corporation International.; Lee Castro; Bernardino Pedraza)

Against — None

On — Janice McCoy, Texas Funeral Service Commission

BACKGROUND: The Texas Funeral Service Commission is responsible for regulating the funeral industry and protecting the public from deceptive practices through a process of impartial enforcement, inspection, licensing, and education to guarantee every citizen's final disposition is conducted professionally and ethically. The commission is composed of seven commissioners appointed by the governor with the advice and consent of the Senate, including:

- two members licensed as both an embalmer and a funeral director for at least five years before appointment;
- one member registered as a cemetery owner or operator; and
- four public members.

The Occupations Code affecting the Texas Funeral Service Commission has not been updated in several years, and some observers say the code should be updated to reflect current commission and industry practices.

DIGEST:

HB 1292 would change statutory provisions related to the Texas Funeral Service Commission, including commission membership, crematory, cemetery, and funeral establishment inspection, funeral director and embalmer licensing, commercial embalming establishment regulation, body removal regulation, printing of public interest brochures, and violations.

Commission membership. The bill would require the member of the commission who was a registered cemetery owner or operator to also be licensed as a funeral director.

Setting fees. The bill would require the commission to set the funeral director's and embalmer's license renewal fee, late renewal penalty, and replacement license fee. The commission also would set continuing education fees and a provisional license application fee rather than a provisional license fee. The bill would remove a statutory prohibition on charging fees to a perpetual care cemetery, including a fee for issuing or renewing a license.

Crematory or funeral establishment inspection. The bill would require a crematory or funeral establishment to be inspected before an initial license could be issued to those establishments. An inspection report would be kept in the crematory's or funeral establishment's licensing file.

Cemetery inspection. The bill would limit commission inspection requirements to only those cemeteries licensed by the commission. It would remove a requirement for a licensed cemetery to be inspected at least once every two years or annually if the commission found a violation. The bill would remove a requirement for the commission by rule to establish procedures and criteria for cemetery inspection and would remove related statutes regulating cemetery inspection. Under the bill, a premises on which interment was practiced would not be required to be open at all times to inspection.

Funeral director's or embalmer's license. The bill would authorize the commission to adopt license application requirements for a funeral

director's license or an embalmer's license and would remove the requirement that the applicant submit a written application to the commission and pay the application fee. HB 1292 would specify that a license would be issued by the commission to authorize the license holder to practice embalming, funeral directing, or both. The bill would authorize the commission to allow a person to apply for a funeral director's or embalmer's license by completing a provisional license program.

The bill would remove a statutory requirement for a funeral director's or embalmer's license applicant to appear before at least one member of the commission for application approval and would remove a provision making approval subject to review by the entire commission. HB 1292 would remove a provision requiring the commission to keep a permanent, alphabetical record of each license application and the actions taken.

The bill would authorize the commission by rule to allow an applicant who graduated from a school or college of mortuary science that was no longer accredited to become licensed as a funeral director or embalmer.

HB 1292 would specify that a funeral director's or embalmer's license would be valid for 24 months and would require rather than allow the commission to adopt a system by rule under which licenses expire. The commission would be required to prorate license fees for an initial license that was issued for fewer than 24 months rather than to take into account the year in which the license expiration date was changed.

Hearing regarding license denial. The bill would allow the commission to refuse to issue or renew a license or provisional license after, rather than before, a hearing and would allow the commission to refuse to issue or renew a license to a person with a criminal conviction.

Mortuary law exam. The bill would require the commission to administer or arrange for the administration of a written examination on mortuary law developed by or for the commission and would specify the content of the exam.

Funeral director's license and embalmer's license exams. The bill would require an applicant for a funeral director's or an embalmer's license to have successfully completed written examinations as applicable, rather than one examination. A funeral director's license or embalmer's license examination no longer would be required to include a written examination on information that would be in the mortuary law exam. The bill would remove a statutory requirement for funeral director's license and embalmer's license examinations to be held at least annually and with notice. It also would remove requirements in statute for the commission to notify a person within 30 days after taking the examination as well as other examination-related notification requirements.

License applicants who held an out-of-state license. The bill would require funeral director's or embalmer's license applicants who were licensed outside of Texas to pay a license fee in an amount set by the commission once their applications were approved. Out-of-state applicants also would be required to file an affidavit that the applicant had graduated from an accredited college of mortuary science. Out-of-state license applicants would be required to file a sworn statement that the out-of-state license was in effect at the time the applicant left his or her former state, country, or territory. The bill would remove an existing requirement for an applicant to provide proof of good standing.

HB 1292 would require an applicant who held an out-of-state license to submit to a criminal background check before submitting a license application. It would remove the requirement in statute for the commission to conduct the background check. The bill also would require an out-of-state license applicant to complete the mortuary examination as specified by the bill. If a person who held a Texas license and another state's license wished to obtain a new Texas license without reexamination, the bill would require both licenses to be in good standing.

Duplicate licenses. The bill would allow the commission to issue a replacement license rather than a duplicate license if the license was lost or destroyed, with an application and payment of a commission-set fee if the license holder needed a license to display in multiple locations. A

license holder could display a duplicate original license or replacement license at the person's place of business in place of the original license.

Reinstating a license. The bill would specify that a person whose license had been expired for one or more years could reinstate a suspended license by retaking and passing the mortuary examination as specified in the bill. HB 1292 would specify other requirements for reinstating a suspended license.

Reissuing a license. The bill would specify that a hearing to determine whether to reissue a license would be held before an administrative law judge, not a hearings officer. A license that had been revoked could be reissued only after the applicant:

- retook and passed the mortuary exam created by the bill;
- paid a fee equal to twice the normally required renewal fee;
- satisfied any other commission requirements; and
- paid any penalty assessed by the commission.

The bill would require a funeral establishment to:

- have access to "vehicles," rather than "rolling stock," of at least one motor hearse;
- include a display of merchandise including at least two rather than five adult caskets, one of which would have to be the least expensive casket offered, that were displayed in a setting that allowed for private selection; and
- conspicuously display the funeral establishment's license.

The bill would specify how the funeral establishment's caskets would be displayed. It would remove a requirement for a funeral establishment to have a casket showroom and other casket-related display requirements. If the commission exempted a funeral establishment from the requirement to have a preparation room for embalming, the exemption would remain in effect until the conditions required for the exemption no longer were met.

Defining embalming establishments. HB 1292 would define a commercial embalming establishment to mean a funeral establishment that met certain requirements. An establishment that functioned solely as a commercial embalming establishment would be required to hold a funeral establishment license and comply with certain requirements of that license, including a requirement to meet fire and safety standards and to have a hearse.

Removal of dead human body. The bill would require a funeral director to direct the pickup of a dead human body, except when directed otherwise by a justice of the peace or other law enforcement official. A funeral director could direct an unlicensed person, provisional license holder, or an embalmer in removing a dead human body. A funeral director would be strictly accountable for compliance with requirements of the bill. If an unlicensed person, a provisional license holder, or an embalmer inadvertently encountered a family member or other person with whom funeral arrangements were normally made, the person would restrict communication with the family member or other person to identifying the person's employer and making any disclosure to the family member or other person required by federal or state law or regulation. The funeral director would not have to provide a funeral director or an embalmer for direction or personal supervision for a first call.

Embalmer-in-charge. The bill would require a commercial embalming establishment to designate to the commission an embalmer-in-charge who would be directly responsible for the embalming business and to notify the commission of any change in that designation. The embalmer-in-charge could be charged with violations if one occurred in the establishment.

Violations. HB 1292 would define unethical conduct violations. It would be a defense to a violation if the licensee represented in writing to the license holder that the person was authorized to make funeral arrangements.

The bill would require the commission to issue a report after determining

that a violation had occurred and would specify how the commission would give notice to the person charged. The commission could suspend or revoke a license without a hearing if it determined the license holder violated the terms of probation. The bill would specify procedures for appeal and would require the commission to adopt by rule a sanctions schedule.

Complaint records. HB 1292 would require the commission to maintain a record rather than a file on each written complaint filed with the commission.

Repealed statute. The bill would remove sections of statute with language similar to provisions added by the bill and other subjects, including certificates of merit for foreign students, provisional licenses for out-of-state licensees, renewal of expired licenses, renewal of a cemetery or funeral establishment license for a perpetual care cemetery, perpetual care cemetery registration, license denial and the effect of a criminal conviction, temporary license suspension or restriction, commission reprimands, and disciplinary and hearing proceedings.

Public interest brochure and website link. The bill would allow a funeral establishment to print additional copies of the public interest information brochure required under Occupations Code, sec. 651.201 only if the commission was unable to provide the number of brochures needed by the establishment. The bill also would authorize the Texas Funeral Service Commission to allow a funeral establishment's website to link to the commission's website.

Applicability of the bill's provisions. Certain provisions in the bill would apply only to a member of the Texas Funeral Service Commission appointed on or after September 1, 2017. A member appointed before that date could continue to serve until the expiration of his or her term. Certain other provisions in the bill also would apply only to applicants for a funeral director's license or embalmer's license who applied on or after September 1, 2017. A person who applied for a funeral director's license, embalmer's license, license reinstatement, license renewal, or license

reissuance before that date would be governed by the relevant law in effect on the date the person applied and the relevant former law as specified in the bill would be continued in effect for that purpose.

Certain bill provisions would apply only to a violation that occurred on or after September 1, 2017, a person placed on probation on or after that date, or a proceeding initiated on or after that date.

The bill would take effect September 1, 2017.

NOTES:

A companion bill, SB 983 by Estes, was referred to the Senate Business and Commerce committee on March 6.