

BILL ANALYSIS

Senate Research Center

H.B. 1468
By: Chisum (Deuell)
Health & Human Services
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

This bill provides for technical and clarifying changes in the statutes regulating funeral directors, cemeteries, and crematories. The bill makes several changes to funeral licensing laws in order to make them clearer and more uniform and to clarify the Texas Funeral Service Commission's authority relating to the documentation necessary for a provisional funeral license. The bill authorizes the written direction by the deceased for disposition of the deceased's remains to supersede the wishes of the authorized agent for the deceased, and regulates the resale of a burial plot.

H.B. 1468 amends current law relating to the regulation of funeral homes, cemeteries, and crematories and provides penalties.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Funeral Services Commission (TFSC) in SECTION 24 (Section 651.304, Occupations Code) of this bill.

Rulemaking authority previously granted to TFSC is modified in SECTION 3 (Section 711.012, Health and Safety Code) of this bill.

Rulemaking authority previously granted to TFSC is rescinded in SECTION 32 of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Subchapter F, Chapter 154, Finance Code, by adding Section 154.265, as follows:

Sec. 154.265. **DEFAULT UNDER CERTAIN CONTRACTS.** (a) Prohibits the purchaser of a trust-funded prepaid funeral benefits contract, notwithstanding any other law, from being considered in default under the contract if the purchaser has paid at least 85 percent of the contract price; and the purchaser was unable to pay due to extenuating financial circumstances.

(b) Provides that a funeral provider is not required to provide funeral merchandise or services under a trust-funded prepaid funeral benefits contract unless any remaining balance, including any applicable finance charge, owed under the contract is paid before the funeral service or the funeral provider agrees in writing to another payment arrangement.

(c) Provides that this section does not affect a purchaser's right to cancel a trust-funded prepaid funeral benefits contract.

SECTION 2. Amends Section 711.008(b), Health and Safety Code, to provide that Subsection (a) (relating to certain prohibitions on the location of land for the use of the interment of remains) does not apply to certain entities, including the establishment and use of a mausoleum that is constructed beneath the principal church building owned by an organized religious society or sect that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code and has recognized religious traditions and practices of interring the remains of ordained clergy in or below the principal church

building; and used only for the interment of the remains of ordained clergy of that organized religious society or sect.

SECTION 3. Amends Section 711.012(b), Health and Safety Code, to authorize the Texas Funeral Services Commission (TFSC) to enforce Section 711.052 (Criminal Penalties) and to adopt rules, establish procedures, and prescribe forms to enforce and administer certain sections, including Section 711.0395, relating to cemeteries that are not perpetual care cemeteries.

SECTION 4. Amends Section 711.038, Health and Safety Code, by adding Subsection (f), as follows:

(f) Prohibits a cemetery organization from reselling the exclusive right of sepulture in a plot unless the exclusive right of sepulture has been reacquired by the cemetery organization. Prohibits a sanction or other penalty from being imposed on a cemetery organization that violates this subsection unless the state agency authorized to enforce this section provide the cemetery organization written notice of the violation and the ceremony organization does not correct the violation before the 91st day after the date on which the cemetery organization received the notice.

SECTION 5. Amends Subchapter C, Chapter 711, Health and Safety Code, by adding Section 711.0395, as follows:

Sec. 711.0395. **MULTIPLE INTERMENTS IN SAME PLOT.** Prohibits a cemetery organization from making more than one interment in a plot unless each owner of the plot consents to the interment.

SECTION 6. Amends Section 711.041, Health and Safety Code, as follows:

Sec. 711.041. **ACCESS TO CEMETERY.** (a) Provides that this right of access extends only to visitation during the hours, rather than during reasonable hours, determined by the owner or owners of the lands under Subsection (b) or at a reasonable time as provided by Subsection (c) and only for purposes usually associated with cemetery visits.

(b) Authorizes the owner or owners of the lands surrounding the cemetery or private burial grounds to designate the routes of reasonable ingress and egress and reasonable hours of availability.

(c) Requires the owner and owners of the lands surrounding a cemetery or private burial grounds, at a time other than the time provided by Subsection (b), to allow a person to enter and exit the owner's land for the purpose of visiting the cemetery or private burial grounds if the person provides written notice to the owner or owners of the lands surrounding the cemetery or private burial grounds of the person's visit, the person provides the notice required by Subdivision 1 (relating to written notice of visitation) not later than the 14th day before the date the person wishes to visit the cemetery, and the time of the visit is reasonable.

SECTION 7. Amends Subchapter D, Chapter 711, Health and Safety Code, by adding Section 711.0515, as follows:

Sec. 711.0515. **INJUNCTIVE RELIEF.** Authorizes the attorney general at the request of TFSC, in addition to bringing an action under Section 711.051 (Enforcement by Attorney General; Proceedings to Forfeit Charter for Noncompliance), to bring an action for injunctive relief to enforce this chapter or a rule or order adopted by TFSC under this chapter.

SECTION 8. Amends Subchapter D, Chapter 711, Health and Safety Code, by adding Section 711.0521, as follows:

Sec. 711.0521. **ACCESS TO CEMETERIES; CRIMINAL PENALTIES.** (a) Provides that a person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or

municipality, commits an offense if the person interferes with a person's reasonable right to ingress and egress under Section 711.041.

(b) Provides that an offense under this section is a Class C misdemeanor.

SECTION 9. Amends Subchapter A, Chapter 716, Health and Safety Code, by adding Section 716.0035, as follows:

Sec. 716.0035. ACCEPTANCE OF REMAINS. Authorizes a crematory establishment to accept deceased human remains for refrigeration before it receives authorization to cremate the remains under Subchapter B (Authorization Requirements).

SECTION 10. Amends Subchapter B, Chapter 716, Health and Safety Code, by adding Section 716.054, as follows:

Sec. 716.054. EXCEPTION; WRITTEN DIRECTIONS. (a) Provides that this section applies and a cremation authorization form is not required under this chapter if the deceased person has left written directions for the disposition by cremation of the deceased person's human remains as provided by Section 711.002(g) (relating to written directions for the disposition, including cremation, of the person's remains in a will, a prepaid funeral contract, or a written instrument signed and acknowledged by such person) and the authorizing agent refuses for any reason to sign a cremation authorization form.

(b) Authorizes the crematory establishment to cremate the deceased person's human remains without receipt of a cremation authorization form signed by the authorizing agent if cremation costs are paid and the authorizing agent provides positive writing identification that the human remains to be cremated as the human remains of the deceased person.

SECTION 11. Amends Section 716.103, Health and Safety Code, as follows:

Sec. 716.103. IDENTIFICATION RESPONSIBILITY OF CREMATORY. (a) Creates this subsection from existing text.

(b) Requires a crematory establishment to place, with the cremated remains, in the temporary container, urn, or other permanent container, a permanent metal identification disc, bracelet, or other item that can be used to identify the deceased person.

SECTION 12. Amends Section 716.104(a), Health and Safety Code, to create an exception under Section 716.054.

SECTION 13. Amends Section 716.152(d), Health and Safety Code, to require the crematory establishment, to the extent practicable, to remove all recoverable cremation residue from the cremation chamber following cremation and pulverize any bone fragments to a particle size of one-eighth inch or less as necessary.

SECTION 14. Amends Section 716.156(a), Health and Safety Code, to require a crematory establishment to perform certain duties, including releasing the cremated remains according to written directions for the disposition by cremation of the deceased person's human remains as provided by Section 711.002(g).

SECTION 15. Amends Subchapter E, Chapter 716, Health and Safety Code, by adding Section 716.204, as follows:

Sec. 716.204. IMMUNITY FROM CRIMINAL AND CIVIL LIABILITY; WRITTEN DIRECTIONS. (a) Defines "cemetery organization" and "embalmer."

(b) Provides that if Section 716.054(a) applies, a cemetery organization, a business operating a crematory or columbarium, a funeral director, an embalmer,

or a funeral establishment is not criminally liable or liable in a civil action for cremating the human remains of a deceased person or carrying out the written directions of the deceased person.

SECTION 16. Amends Section 716.304, Health and Safety Code, to authorize a person to scatter cremated remains over uninhabited public land, over a public waterway or sea, or on the private property of a consenting owner, rather than on the private property of a consenting owner if the remains are reduced to a particle size of one-eighth inch or less.

SECTION 17. Amends Section 716.351(a), Health and Safety Code, to provide that a person commits an offense if the person cremates human remains without receipt of written directions for the disposition by cremation of the deceased person's human remains as provided in Section 711.002(g). Makes nonsubstantive changes.

SECTION 18. Amends Section 651.154(a), Occupations Code, to authorize TFSC to set certain fees in amounts reasonable and necessary to administer this chapter including the cemetery, crematory, or funeral establishment license fee, renewal fee, and late renewal penalty.

SECTION 19. Amends Section 651.156, Occupations Code, by adding Subsection (d), to provide that a subpoena or subpoena duces tecum issued under this section is not effective unless it is issued in compliance with state and federal law and commission rules adopted under Subsection (c) (relating to standards that enable the executive director to issue subpoenas and subpoenas duces tecum).

SECTION 20. Amends Section 651.165(d), Occupations Code, to authorize a person whose license has been expired for one year or more to renew the license by retaking and passing the applicable examination; paying any applicable fees, including a renewal fee that is equal to two times the normally required renewal fee; and completing any continuing education required under Section 651.266 (Continuing Education). Deletes existing text prohibiting a person whose license has been expired for one year or more from renewing the license; authorizing the person to obtain a new license by complying with the requirements and procedure, including the examination requirements, for obtaining an original license.

SECTION 21. Amends Subchapter D, Chapter 651, Occupations Code, by adding Section 651.1655, as follows:

Sec. 651.1655. REINSTATEMENT OF SUSPENDED LICENSE. Authorizes a person whose license has been suspended to renew the license by paying to TFSC a renewal fee that is equal to two times the normally required renewal fee in addition to any penalty assessed to TFSC.

SECTION 22. Amends the heading to Section 651.267, Occupations Code, to read as follows:

Sec. 651.267. REISSUANCE OF REVOKED LICENSE.

SECTION 23. Amends Sections 651.267(a) and (d), Occupations Code, as follows:

(a) Authorizes TFSC, on application, to reissue a license issued under this subchapter to a person whose license has been revoked, rather than suspended or revoked. Prohibits an application to reissue a license from being made before the third, rather than the first, anniversary of the date of the revocation, rather than of the suspension or revocation.

(d) Authorizes a license that has been revoked, rather than a license that has been revoked or suspended for a period of five years or more, to be reinstated only after the applicant retakes and passes the applicable examination, pays a fee that is equal to two times the normally required renewal fee, and satisfies any other TFSC requirements, including any continuing education requirements under Section 651.266.

SECTION 24. Amends Section 651.304(e), Occupations Code, to require TFSC by rule to prescribe reporting requirements for provisional license holders.

SECTION 25. Amends Section 651.351, Occupations Code, by amending Subsections (d) and (f) and adding Subsection (i), as follows:

(d) Requires a funeral establishment to meet certain requirements, including to include a display containing sufficient merchandise to permit reasonable selection, including at least five adult caskets, two of which must be full-size and displayed in a casket showroom. Creates an exception under Subsection (i).

(f) Authorizes the three adult caskets that are not required to be full-size under Subsection (d)(7) (relating to a requirement that a funeral establishment a display containing sufficient merchandise to permit reasonable selection including certain caskets) to be displayed in a partial panel display or by video or brochure, online, or in any other manner.

(i) Provides that Subsection (d)(2) (relating to the requirement that, except as provided by Subsection (i), a funeral establishment be located at a fixed place that is not tax-exempt property or a cemetery) does not apply to a funeral establishment located on tax-exempt property of an accredited postsecondary educational institution that is operated in connection with an accredited educational program for funeral services.

SECTION 26. Amends Section 651.353(d), Occupations Code, to provide that this section does not apply to a perpetual care cemetery.

SECTION 27. Amends Sections 651.354(a), (c), and (d), Occupations Code, as follows:

(a) Requires that the notice state that to renew the license, the cemetery or funeral establishment is required to pay the renewal fee not later than the license expiration date. Deletes existing text requiring that the notice, except as provided by Subsection (d), state that to renew the license, the cemetery or funeral establishment is required to pay the renewal fee not later than September 30.

(c) Prohibits the cemetery or funeral establishment, if the license is expired for longer than 30 days, from operating as a cemetery or funeral establishment until the renewal fee and the late payment penalty are paid. Deletes existing text prohibiting the cemetery or funeral establishment, if the license is expired for longer than 30 days, from renewing the license and from operating as a cemetery or funeral establishment until the establishment is issued a new license in the manner provided for issuing an original license.

(d) Provides that this section does not apply to a perpetual care cemetery. Deletes existing text requiring the cemetery, to renew a license for a perpetual care cemetery, to submit a renewal on a form prescribed by TFSC; and providing that the license is renewed on receipt of the form by TFSC.

SECTION 28. Amends Subchapter H, Chapter 651, Occupations Code, by adding Section 651.355, as follows:

Sec. 651.355. PERPETUAL CARE CEMETERY REGISTRATION. (a) Requires the Texas Department of Banking (TDB) to provide annually to TFSC a list of perpetual care cemeteries, including the address and other contact information for each cemetery. Requires TFSC to annually register each perpetual care cemetery on that list.

(b) Provides that a perpetual care cemetery is not required to pay a registration fee or renewal fee under this chapter.

SECTION 29. Amends Subchapter J, Chapter 651, Occupations Code, by adding Section 651.461, as follows:

Sec. 651.461. DEFENSE TO VIOLATION. Provides that a person licensed under this chapter does not violate this chapter by engaging in conduct regarding funeral arrangements under the direction of a person who represents to the license holder that the person is authorized to make funeral arrangements for the deceased and provides written

directions to the license holder in a manner provided by Section 711.002 (Disposition of Remains; Duty to Inter), Health and Safety Code.

SECTION 30. Amends Section 651.507(a), Occupations Code, to require TFSC or an administrative law judge employed by the State Office of Administrative Hearings to review each disciplinary proceeding to determine whether the license holder has previously violated the same provision of this chapter or rule adopted under this chapter, rather than has committed the same type of violation on one or more previous occasions. Requires TFSC or the administrative law judge, if it is determined that the license holder has previously violated the same provision of this chapter or rule adopted under this chapter, rather than has previously committed the same type of violation, to impose a disciplinary action that is more severe than that imposed on the previous occasion.

SECTION 31. Amends Section 651.658(d), Occupations Code, to prohibit the crematory establishment, if the license is expired for longer than 30 days, from operating a crematory until the renewal fee and late payment penalty are paid. Deletes existing text prohibiting a person from renewing a license that has been expired for more than 30 days; and requiring a person holding a license that has been expired for more than 30 days to apply for a new license as required by this subchapter to conduct a crematory business.

SECTION 32. Repealer: Section 716.004(b) (relating to a prohibition from certain crematory establishments from accepting deceased human remains for cremation until the cremation is authorized in writing), Health and Safety Code;

Repealer: Sections 651.304(b) (relating to a required report by a provisional license holder to TFSC) and (c) (relating to a requirement that the provisional license holder make the monthly report regardless of certain circumstances), Occupations Code;

Repealer: Section 651.651(3) (relating to the definition of "perpetual care cemetery"), Occupations Code; and

Repealer: Section 651.656(d) (relating to the establishment by rule of a fee), Occupations Code.

SECTION 33. Makes application of Section 154.265, Finance Code, as added by this Act, prospective.

SECTION 34. Makes application of the change in law made by Section 711.0521, Health and Safety Code, as added by this Act, prospective.

SECTION 35. Makes application of Sections 651.165(d), 651.354, and 651.658(d), Occupations Code, as amended by this Act, prospective.

SECTION 36. Makes application of Section 651.1655, Occupations Code, as added by this Act, prospective.

SECTION 37. Makes application of Section 651.267, Occupations Code, as amended by this Act, prospective.

SECTION 38. Requires TDB, not later than January 1, 2010, to provide the initial list of perpetual care cemeteries to TFSC as required by Section 651.355, Occupations Code, as added by this Act.

SECTION 39. Effective date: September 1, 2009.