

BILL ANALYSIS

Senate Research Center
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Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Funeral Service Commission (TFSC) regulates the funeral and death care industry in Texas by licensing and overseeing funeral directors and embalmers, as well as commercial embalming facilities, crematories, and certain cemeteries. TFSC is subject to abolishment under the Sunset Act on September 1, 2019, unless continued by the legislature.

Despite limited resources, the Sunset Advisory Commission found TFSC largely achieves its licensing and regulatory functions and effectively monitors and enforces professional standards for licensees, and recommends continuing the agency for 12 years. Other recommendations standardize licensing requirements and clarify the agency's authority to protect the public. TFSC also recommends discontinuing TFSC's regulation of five non-perpetual care cemeteries, which is unnecessary to protect the public.

Major Provisions in Sunset Legislation

- Continues TFSC for 12 years.
- Discontinues TFSC's regulation of five non-perpetual care cemeteries.
- Streamlines and standardizes enforcement processes.
- Modernizes licensure requirements.

Comparison of House Engrossed Version to the House Introduced Version

The House engrossed version differs from the House introduced version of the bill by making the following changes:

- Corrects drafting errors to remove additional references and rulemaking authority related to the deregulation of non-perpetual care cemeteries. (Page 2, Line 3; Page 4, Line 10)
- Requires rather than allows the agency to adopt a staggered license renewal process, but allows the agency to prorate license fees and set late payment penalty fees in rule. (Page 9, Lines 2-6; Page 12, Lines 17-18)

H.B. 1540 amends current law relating to the continuation and functions of the Texas Funeral Service Commission, and authorizes fees.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Funeral Service Commission (TFSC) in SECTION 14 (Section 651.154, Occupations Code), and SECTION 35 (Section 651.658, Occupations Code) of this bill.

Rulemaking authority previously granted to TFSC is modified in SECTION 2 (Section 711.012, Health and Safety Code) and SECTION 18 (Section 651.164, Occupations Code), of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 711.007(b), Health and Safety Code, to delete existing text listing the Texas Funeral Services Commission (TFSC) as a party that can bring a proceeding in district court to abate a cemetery as a nuisance.

SECTION 2. Amends Section 711.012(b), Health and Safety Code, to authorize TFSC to adopt rules, establish procedures, and prescribe forms to enforce and administer Section 711.0105

(Method of Removal of Remains), rather than certain sections relating to cemeteries that are not perpetual care cemeteries.

SECTION 3. Amends Section 711.0515, Health and Safety Code, as follows:

Sec. 711.0515. ENFORCEMENT BY ATTORNEY GENERAL; INJUNCTIVE RELIEF. Makes a nonsubstantive change. Authorizes the Texas attorney general (attorney general), rather than 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 (Certain Historic Cemeteries) or a rule or order adopted by TFSC under this chapter.

SECTION 4. Amends Section 715.003, Health and Safety Code, as follows:

Sec. 715.003. PARTIES TO ACTION. Requires an action commenced under this chapter to be brought by the incorporators of the nonprofit corporation on behalf of the nonprofit corporation. Provides that the necessary parties to the action on which citation shall be served under Section 715.006 (Service of Citation) are:

- (1) makes no changes to this subdivision;
- (2)–(3) makes nonsubstantive changes to these subdivisions; and
- (4) deletes this subdivision and existing text relating to TFSC as a necessary party to an action.

SECTION 5. Amends Section 715.006(a), Health and Safety Code, as follows:

(a) Requires the nonprofit corporation, before the 31st day after the date an action is commenced by a nonprofit corporation under this chapter, to cause citation to be issued and served by certified mail, return receipt requested, on:

- (1)–(2) makes no changes to these subdivisions;
- (3) makes no changes to these subdivisions; and
- (4) deletes text referring to TFSC and redesignates Subdivision (5) as this subdivision.

SECTION 6. Amends the heading to Subtitle L, Title 3, Occupations Code, to read as follows:

SUBTITLE L. CREMATORY SERVICES, FUNERAL DIRECTING, AND EMBALMING

SECTION 7. Amends the heading to Chapter 651, Occupations Code, to read as follows:

CHAPTER 651. CREMATORY SERVICES , FUNERAL DIRECTING, AND EMBALMING

SECTION 8. Amends Section 651.002, Occupations Code, as follows:

Sec. 651.002. APPLICATION OF SUNSET ACT. Provides that, unless continued in existence as provided by that chapter (Cemetery and Crematory Services, Funeral Directing, and Embalming), TFSC is abolished and this chapter expires September 1, 2031, rather than September 1, 2019.

SECTION 9. Amends Section 651.004, Occupations Code, as follows:

Sec. 651.004. New heading: REGULATION OF CREMATORY SERVICES. (a) Requires TFSC to regulate crematory services, rather than cemetery and crematory

services, as provided by this chapter and Chapter 716 (Crematories), Health and Safety Code.

(b) Prohibits TFSC from regulating crematory services, rather than cemetery or crematory services, that occur after burial or inurnment unless the services relate to the care and treatment of the remains in an urn, casket, or outer enclosure.

SECTION 10. Amends Section 651.051(a), Occupations Code, as follows:

(a) Provides that TFSC consists of seven members appointed by the governor, with the advice and consent of the senate as follows:

(1) makes no changes to this subdivision;

(2) one member who is a crematory owner or operator, rather than a registered cemetery owner or operator; and

(3) makes no changes to this subdivision.

SECTION 11. Amends Section 651.0511, Occupations Code, by amending Subsection (b) and adding Subsection (d), as follows:

(b) Requires the training program that a member of TFSC is required to attend in order to rate, deliberate, or be counted as a member to provide the person with information regarding:

(1) the law governing TFSC operations, rather than this chapter;

(2) the programs, functions, rules, and budget of TFSC, rather than the programs operated by TFSC;

(3) the scope of and limitations on the rulemaking authority of TFSC, rather than the role and functions of TFSC;

(4) the results of the most recent formal audit of TFSC. Deletes existing text referring to the rules of TFSC with an emphasis on the rules that relate to disciplinary and investigatory authority, the current budget for TFSC;

(5) the requirements of:

(A) laws relating to open meetings, public information, administrative procedure, and disclosing conflicts of interest, rather than the open meetings law, Chapter 551 (Open Meetings), Government Code, the administrative procedure law, and Chapter 2001 (administrative Procedure), Government Code; and

(B) other laws applicable to members of a state policymaking body in performing their duties, rather than other laws relating to public officials, including conflict-of-interest laws; and

(6) redesignates Subdivision (8) as this subdivision.

Redesignates Subdivision (7) as Subdivision (5) and Subdivisions (7)(B) and (C) as Subdivision 5(A).

(d) Requires the executive director of TFSC (executive director) to create a training manual that includes the information required by Subsection (b). Requires the executive director to distribute a copy of the training manual annually to each member of TFSC. Requires each member of TFSC to sign and submit to the executive director a statement acknowledging that the member received and has reviewed the training manual.

SECTION 12. Amends Section 651.151, Occupations Code, by adding Subsection (d), as follows:

(d) Authorizes TFSC to appoint advisory committees to perform the advisory functions assigned to the committees by TFSC. Provides that an advisory committee appointed under this subsection is subject to Chapter 2110 (State Agency Advisory Committees), Government Code.

SECTION 13. Amends Section 651.1525(a), Occupations Code, as follows:

(a) Requires those persons who TFSC is required to seek to advice and opinions from to include, at a minimum, consumer groups and trade associations that represent persons from each group regulated by TFSC, including funeral directors and crematory operators, rather than funeral directors and cemetery and crematory operators.

SECTION 14. Amends Section 651.154(a), Occupations Code, as follows:

(a) Makes a nonsubstantive change. Requires TFSC by rule to establish fees in amounts reasonable and necessary to cover the costs of administering this chapter, rather than requiring TFSC to set certain fees in amounts reasonable and necessary to administer this chapter.

SECTION 15. Amends the heading to Section 651.157, Occupations Code, to read as follows:

Sec. 651.157. INSPECTION OF CREMATORY OR FUNERAL ESTABLISHMENT.

SECTION 16. Amends Sections 651.157(a), (b), (d), and (f), Occupations Code, as follows:

(a) Requires a licensed crematory or funeral establishment, except as provided by Subsection (b), to be inspected at least once every three years by an agent of TFSC or by an agent of the state or a political subdivision authorized by TFSC to make inspections on its behalf, rather than requiring a licensed cemetery, crematory, or funeral establishment to be inspected at least once every two years by an agent of TFSC or by an agent of the state or a political subdivision authorized by TFSC to make inspections on its behalf.

(b), (d), and (f) Makes conforming changes to these subsections.

SECTION 17. Amends Section 651.162, Occupations Code, as follows:

Sec. 651.162. New heading: ANNUAL REPORT. (a) Creates this subsection from existing text. Requires TFSC to prepare a written annual report describing the activities of TFSC during the preceding fiscal year, rather than requiring TFSC to file biennially with the governor a written description of the activities of TFSC during the two preceding fiscal years. Requires the report to include information regarding:

- (1) licensing, inspection, and enforcement activities;
- (2) changes to commission policies; and
- (3) complaint information.

(b) Requires TFSC to post the report on TFSC's Internet website.

SECTION 18. Amends Section 651.164, Occupations Code, as follows:

Sec. 651.164. New heading: LICENSED EXPIRATION; TERM. (a) Provides that a license issued under this chapter (Cemetery and Cremation Services, Funeral Directing, and Embalming), other than a provisional license, is valid for a term of one or two years as provided by TFSC rule.

(b) Creates this subsection from existing text. Requires TFSC by rule to adopt a system under which licenses expire on various dates during the year, rather than authorizing TFSC by rule to adopt a system under which licenses expire on various dates during the year. Requires TFSC, for a license that is issued for less than a full term, to prorate license fees on a monthly basis so that the license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid, rather than requiring TFSC, for the year in which the license expiration date is changed, to prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid.

SECTION 19. Amends Subchapter E, Chapter 651, Occupations Code, by adding Section 651.2035, as follows:

Sec. 651.2035. CONFIDENTIALITY OF COMPLAINT INFORMATION. (a) Provides that, except as provided by Subsection (b), a complaint and investigation and all information and materials compiled by TFSC in connection with the complaint and investigation are not subject to:

(1) disclosure under Chapter 552, Government Code;

(2) disclosure, discovery, subpoena, or other means of legal compulsion for release of information to any person.

(b) Authorizes a complaint or investigation subject to Subsection (a) and all information and materials compiled by TFSC in connection with the complaint to be disclosed to:

(1) TFSC and TFSC employees or agents involved in license holder discipline;

(2) a party to a disciplinary action against the license holder or that party's designated representative;

(3) a law enforcement agency; or

(4) a governmental agency, if the disclosure is required or permitted by law.

(c) Provides that TFSC is not required under Subsection (b) to release the identity of a complainant who will not testify at the hearing.

(d) Provides that, notwithstanding Subsection (a), on the dismissal or final resolution of a complaint or investigation, a final order of TFSC is subject to disclosure under Chapter 552, Government Code.

SECTION 20. Amends Section 651.259(e), Occupations Code, to delete existing text providing that an applicant is not eligible for a license under this section (Application of Out-of-State License Holder) if the applicant has, in the 10 years preceding the date of the application, been finally convicted of a misdemeanor involving moral turpitude or a felony.

SECTION 21. Amends Sections 651.260(a) and (b), Occupations Code, as follows:

(a) Makes nonsubstantive changes and deletes existing text authorizing a license holder to apply for a duplicate license if a license issued under this chapter is lost or destroyed. Authorizes a license holder to apply to TFSC for a duplicate license:

(1) if a license issued under this chapter is lost or destroyed; and

(2) as needed to comply with Section 651.261 (Posting of License).

(b) Requires a license holder to submit the application on a form prescribed by TFSC and to submit with the application an affidavit verifying:

(1) for an applicant under Subsection (a)(1), the loss or destruction of the license;

(2) makes no changes to this subdivision; and

(3) for an applicant under Subsection (a)(1), any other information concerning the loss or destruction of the license TFSC requires.

SECTION 22. Amends the heading to Subchapter H, Chapter 651, Occupations Code, to read as follows:

SUBCHAPTER H. LICENSE REQUIREMENTS: FUNERAL AND COMMERCIAL
EMBALMER ESTABLISHMENTS

SECTION 23. Amends Section 651.351(g), Occupations Code, as follows:

(g) Makes a nonsubstantive change. Authorizes TFSC to exempt a funeral establishment from the requirements of Subsection (d)(5) (relating to requiring a funeral establishment to include a preparation room containing the facilities, equipment, and supplies required by TFSC rule to ensure the provision of adequate embalming services) if the establishment meets the requirements for the exemption provided by TFSC rule. Deletes existing text authorizing TFSC to exempt a funeral establishment from the requirements of Subsection (d)(7) if the majority owner or designated agent of record of a funeral establishment submits a written petition to TFSC requesting an exemption and stating the establishment's name and address, that the establishment is located within 50 miles of a facility owned by the establishment requesting the exemption and at which embalming services are authorized to be performed, and that no embalming services will be performed at the establishment, and TFSC determines that the criteria in Subdivision (1) have been met.

SECTION 24. Amends Section 651.354, Occupations Code, as follows:

Sec. 651.354. New heading: RENEWAL OF FUNERAL ESTABLISHMENT LICENSE.

(a) Requires TFSC to mail written notice to a funeral establishment, rather than cemetery or funeral establishment, of the impending expiration of the establishment's license not later than the 30th day before the expiration date of the license. Requires the notice to state that:

(1) to renew the license, the funeral establishment, rather than the cemetery or funeral establishment, is required to pay the renewal fee in an amount provided by rule not later than the license expiration date; and

(2) makes no changes to this subdivision.

(b) Provides that a funeral establishment that fails to pay the license renewal fee by the due date is subject to a late payment penalty in an amount determined by rule, rather than providing that a cemetery or funeral establishment that fails to pay the license renewal fee by the due date is subject to a late payment penalty equal to the amount charged for the license renewal fee.

(c) Prohibits the funeral establishment, if the license is expired for longer than 30 days, from operating as a funeral establishment until the renewal fee and the late payment penalty are paid, rather than prohibiting the cemetery or funeral establishment from operating as a cemetery or funeral establishment until the renewal fee and the late payment penalty are paid.

(d) Deletes this subsection and existing text providing that this section does not apply to a perpetual care cemetery.

SECTION 25. Amends Section 651.401, Occupations Code, as follows:

Sec. 651.401. New heading: FIRST CALL; REMOVAL OF BODY. (a) Provides that first call occurs at the beginning of a relationship between a funeral director and a person authorized by Section 711.002 (Disposition of Remains; Duty to Inter), Health and Safety Code, to control the disposition of the decedent's remains.

(b) Creates this subsection from existing text. Requires a funeral director, notwithstanding Subsection (c), to direct the pickup of a dead human body under this chapter, rather than requiring a funeral director or embalmer to direct and personally supervise the pickup of a dead human body on first call.

(c) Redesignates Subsection (b) as this subsection. Authorizes a dead human body to be transferred without a funeral director directing the transfer. Deletes existing text that authorizes a dead human body to be transferred without a funeral director personally making the transfer from one funeral establishment to another, from a funeral establishment to and from a morgue in which an autopsy is performed, to and from an airport, crematory, or both, or in in circumstances in which there is no reasonable probability that an unlicensed person will encounter a family member or other person with whom funeral arrangements are normally made by a funeral director or embalmer.

(d) Redesignates Subsection (c) as this subsection. Deletes existing text referring to providing that a funeral director or embalmer who directs the removal or transfer of a dead human body without personally supervising the transfer is strictly accountable for compliance with the requirements of first call as provided by this section. Authorizes a funeral director to direct an unlicensed person, a provisional license holder, or an embalmer in the removal of a dead human body. Provides that a funeral director who directs the removal of a dead human body by an unlicensed person is strictly accountable for compliance with the requirements of this chapter. Requires the person, if an unlicensed person, a provisional license holder, or an embalmer inadvertently encounters a family member or other person with whom funeral arrangements are normally made, to restrict communication with the family member or other person, rather than requiring the unlicensed person, if an unlicensed person inadvertently encounters a family member or other person with whom funeral arrangements are normally made, to restrict communication with the family member or other person, to:

- (1) identifying the person's employer, rather than identifying the unlicensed person's employer; and
- (2) deletes existing text referring to arranging an appointment with the unlicensed person's employer for a family member or other person who indicates a desire to make funeral arrangements for the deceased; and
- (3) redesignates this subdivision as Subdivision (2).

Deletes existing Subsection (d) and text providing that a funeral director or embalmer who directs the removal or transfer of a dead human body without personally supervising the transfer is strictly accountable for compliance with the requirements of first call as provided by this section.

SECTION 26. Amends the heading to Section 651.4055, Occupations Code, to read as follows:

Sec. 651.4055. RETAIL PRICE LIST; CREMATORY.

SECTION 27. Amends Sections 651.4055(a) and (b), Occupations Code, as follows:

(a) Redefines "retail price list" to mean a printed or typewritten list of the retail price of items or services provided by a crematory, rather than by a cemetery or crematory, for purposes of this section.

(b) Makes a conforming change.

SECTION 28. Amends the heading to Section 651.4065, Occupations Code, to read as follows:

Sec. 651.4065. PURCHASE AGREEMENT; CREMATORY.

SECTION 29. Amends Section 651.4065(a), Occupations Code, to make conforming changes.

SECTION 30. Amends Section 651.460, Occupations Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Provides that a funeral establishment violates this chapter if:

(1) makes no changes to this subdivision;

(2)–(3) makes nonsubstantive changes to these subdivisions; or

(4) the funeral establishment or a person acting on behalf of a funeral establishment allows or assists an unlicensed person to engage in an activity for which a person is required to hold a license under this chapter.

(c) Provides that a crematory violates this chapter if the crematory or a person acting on behalf of the crematory allows or assists an unlicensed person to engage in an activity for which a person is required to hold a license under this chapter.

SECTION 31. Amends Section 651.501(a), Occupations Code, as follows:

(a) Authorizes TFSC, after a hearing as provided by this subchapter (Disciplinary Actions and Procedures and License Denials), to issue a reprimand, assess an administrative penalty, revoke, suspend, or probate the suspension of a license or provisional license, order a license holder to pay a refund under Section 651.603, or impose any combination of those penalties for a violation of this chapter or a rule adopted under this chapter.

SECTION 32. Amends Section 651.601, Occupations Code, by adding Subsection (a-2) to authorize TFSC to bring an action for appropriate injunctive relief against a person who is not licensed under this chapter to enjoin a violation of this chapter or a rule adopted under this chapter.

SECTION 33. Amends Subchapter M, Chapter 651, Occupations Code, by adding Section 651.603, as follows:

Sec. 651.603. REFUND. (a) Authorizes TFSC to order a license holder to pay a refund to a person harmed by the license holder's violation of this chapter or failure to fulfill the terms of a purchase agreement with the person.

(b) Prohibits the amount of a refund ordered under this section from exceeding the actual amount paid by the person to the license holder.

SECTION 34. Amends Section 651.657, Occupations Code, by adding Subsection (d) to require the application form for renewal of a license as a crematory establishment to allow the applicant to provide a written statement that the information previously provided to TFSC under Subsection (b) has not changed, if applicable.

SECTION 35. Amends Section 651.658, Occupations Code, by amending Subsections (a) and (f) and adding Subsection (a-1), as follows:

(a) Makes nonsubstantive changes. Requires a crematory establishment to annually file a report with TFSC that lists the number of cremations performed at the crematory during the previous year, rather than requiring a crematory establishment, to renew a crematory establishment license, to annually file a report with TFSC that lists the number of cremations performed at the crematory during the previous year.

Deletes text requiring a crematory establishment, to renew a crematory establishment license, to annually file a report with TFSC that lists the number of cremations performed at the crematory during the previous year, pay the required fee, and provide the information required by Section 651.657 (Crematory Establishment License) or a written statement that the information has not changed since previously provided. Deletes Paragraphs (a)(1) and (2).

(a-1) Makes nonsubstantive changes. Requires an applicant for renewal of a crematory establishment license to apply to TFSC and pay the required fee, rather than pay the license renewal fee. Deletes existing text referring to providing the information required by Section 651.657 (Crematory Establishment License Application) or a written statement that the information has not changed since previously provided.

(f) Requires TFSC to impose a late fee, rather than a \$100 late fee, in an amount provided by rule for each day a crematory establishment fails to submit the annual report required by this section if an extension has not been granted.

SECTION 36. Repealer: Section 651.154(b) (relating to requiring TFSC to set the provisional license fee, examination fee, renewal fee, and late renewal penalty in amounts reasonable and necessary to administer the provisional license program), Occupations Code;

Repealer: Section 651.154(c) (relating to prohibiting TFSC from charging a fee to a perpetual care cemetery, including a fee for issuing or renewing a license issued under this chapter), Occupations Code;

Repealer: Section 651.1571 (Inspection Requirements For Certain Cemeteries; Exception For Perpetual Care Cemeteries), Occupations Code;

Repealer: Section 651.203(b) (relating to providing that information in a file maintained under this section, other than information relating to a complaint that has not reached a final disposition, is public information), Occupations Code;

Repealer: Section 651.2595 (Provisional License), Occupations Code;

Repealer: Section 651.353 (Cemetery Establishment Requirements), Occupations Code;

Repealer: Section 651.355 (Perpetual Care Cemetery Registration), Occupations Code; and

Repealer: Section 651.4065(c) (relating to requiring the operator of a cemetery to sign a purchase agreement for a cemetery), Occupations Code.

SECTION 37. Provides that the change in law made by this Act to Section 651.051(a), Occupations Code, does not affect the entitlement of a member serving on TFSC immediately before the effective date of this Act to continue to serve for the remainder of the member's term. Requires the governor, as the terms of TFSC members expire, to appoint or reappoint members who have the qualifications required for members under Section 651.051(a), Occupations Code, as amended by this Act.

SECTION 38. (a) Provides that, except as provided by Subsection (b) of this section, Section 651.0511, Occupations Code, as amended by this Act, applies to a member of TFSC appointed before, on, or after the effective date of this Act.

(b) Provides that a member of TFSC who, before the effective date of this Act, completed the training program required by Section 651.0511, Occupations Code, as that law existed before the effective date of this Act, is required to complete additional training only on subjects added by this Act to the training program as required by Section 651.0511, Occupations Code, as amended by this Act. Prohibits a member of TFSC described by this subsection from voting, deliberating, or being counted as a member in attendance at a meeting of TFSC held on or after December 1, 2019, until the member completes the additional training.

SECTION 39. Makes application of Section 651.259(e), Occupations Code, as amended by this Act, prospective.

SECTION 40. Makes application of Section 651.351(g), Occupations Code, as amended by this Act, prospective.

SECTION 41. Makes application of Sections 651.460(b) and 651.501(a), Occupations Code, as amended by this Act, and Sections 651.460(c), 651.601(a-2), and 651.603, Occupations Code, as added by this Act, prospective.

SECTION 42. Makes application of Chapter 651, Occupations Code, in regards to fees, prospective.

SECTION 43. (a) Effective date, except as provided by Subsection (b) of this section: September 1, 2019.

(b) Effective date, Section 651.162, Occupations Code, as amended by this Act: September 1, 2020.