

BILL ANALYSIS

C.S.H.B. 587
By: Marchant
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

In 2001 the legislature expanded the Texas Funeral Service's authority to include crematories as well as cemeteries. House Bill 3067, 77th Legislature, prescribed basic guidelines for Texas crematories, such as the location of a crematory and crematory registration guidelines. However, with the number of cremations within Texas on the rise, further regulations to protect the consumer's interests are necessary.

This bill would provide for comprehensive regulation of the cremation process. Specifically, the bill encompasses the licensing and registration of crematory operators, the training of crematory operators and their personnel, the procedures for the handling of human remains which are to be cremated, the procedures for the handling and identification of cremated human remains, the provision for the oversight and disciplinary action of licensed crematory operators, and the location of where crematories may be established and operated.

RULEMAKING AUTHORITY

The bill expressly gives rulemaking authority to the Texas Funeral Service Commission in SECTION 2 (Sec. 716.002, Health and Safety Code) and SECTION 14 (Sec. 651.656 (d), Occupations Code).

ANALYSIS

SECTION 1. Expands Subtitle C, Title 8, Health and Safety Code, to include crematories.

SECTION 2. Amends Subtitle C, Title 8, Health and Safety Code, by adding Chapter 716 related to crematories.

Subchapter A

Sec. 716.001, Health and Safety Code, defines the following words and phrases: authorizing agent, cemetery, commission, cremated remains, cremation, cremation chamber, cremation container, cremation interment container, crematory, crematory establishment, funeral director, funeral establishment, scattering area, temporary container, and urn.

Sec. 716.002, Health and Safety Code, would allow the Texas Funeral Service Commission to adopt rules consistent with this chapter and Chapter 651, Occupations Code, to govern the cremation of human remains.

Sec. 716.003, Health and Safety Code, would allow for a crematory to be constructed on or adjacent to a perpetual care cemetery or adjacent to a funeral establishment. A crematory not registered with the commission on September 1, 2003, must be adjacent to a perpetual care cemetery or funeral establishment and be owned or operated by the person that owns or operates the perpetual care cemetery or funeral establishment. The phrase "adjacent to" is defined.

Sec. 716.004, Health and Safety Code, states a crematory establishment may not

cremate human remains within 48 hours of the time of death indicated on a death certificate unless the waiting period is waived in writing by a justice of the peace or medical examiner of the county in which the death occurred or a court order.

The section also states that unless a crematory establishment is also licensed as a funeral establishment, the crematory establishment may not accept any deceased human remains for cremation until the cremation is authorized in writing by a justice of the peace or medical examiner of the county in which the death occurred.

Sec. 716.005, Health and Safety Code, would allow a crematory establishment to adopt procedures not inconsistent with this chapter for the management and operation of a crematory.

Sec. 716.006, Health and Safety Code, states that the provisions of this chapter may not be construed to require a funeral director to perform any act not otherwise authorized by other law.

Subchapter B

Sec. 716.051, Health and Safety Code, would require that, except as otherwise provided in this chapter, a crematory establishment may not cremate deceased human remains until it receives a cremation authorization form signed by an authorizing agent and a death certificate or other death record that indicates the deceased human remains may be cremated.

Sec. 716.052, Health and Safety Code, states the cremation authorization form must: (1) identify the deceased person and the time and date of death; (2) include the name and address of the funeral director or other person that contracted to provide for the cremation; (3) identify the authorizing agent and the relationship between the authorizing agent and the deceased person; (4) include a statement declaring that (a) the authorizing agent has the right to authorize the cremation of the deceased person and is not aware of any person with a superior or equal priority right; or (b) if another person has an equal priority right to authorize cremation, the authorizing agent has made all reasonable efforts but failed to contact that person and believes the person would not object to the cremation and agrees to indemnify and hold harmless the funeral establishment and the crematory establishment for any liability arising from performing the cremation without the person's authorization; (5) authorize the crematory establishment to cremate the human remains; (6) declare the human remains do not contain a pacemaker or any other material or implant that may potentially be hazardous or cause damage to the cremation chamber or the person performing the cremation; (7) include the name of the person or funeral establishment authorized to receive the cremated remains from the crematory establishment; (8) detail the manner of permanent disposition of the cremated remains, if known; (9) list any items of value delivered to the crematory establishment along with the human remains and include instructions on the handling of the items; (10) specify whether the authorizing agent has arranged for a viewing or service with the deceased person present before cremation and the date and time of the viewing or service; and, (11) include the signature of the authorizing agent attesting to the accuracy of all representations contained on the cremation authorization form.

The cremation authorization form must also include a written notice to the authorizing agent declaring that the authorizing agent assumes responsibility for the disposition of the cremated remains. The crematory establishment may release to the authorizing agent, in person, the cremated remains of the deceased person, ship the cremated remains to the authorizing agent if the agent authorizes shipment and provides a shipping address on the authorization form, or dispose of the cremated remains in accordance with this chapter not earlier than the 121st day following the date of cremation if the cremated remains have not

been claimed by the authorizing agent. A crematory establishment shall provide a cremation authorization form to an authorizing agent on request.

A funeral director or other representative of a funeral establishment that contracts to provide for the cremation of deceased human remains must sign the cremation authorization form.

Sec. 716.053, Health and Safety Code, provides an authorizing agent may delegate to a representative in writing the authority to execute a cremation authorization form. The authorizing agent's written delegation of authority must be notarized and include the name and address of the authorizing agent and the relationship of the authorizing agent to the deceased person, the name and address of the representative, and an acknowledgment by the authorizing agent that the representative may serve as the authorizing agent and execute the cremation authorization form. A crematory establishment is not liable in a civil action for relying on a cremation authorization form executed by a representative of the authorizing agent to whom authority is delegated in accordance with this section.

Subchapter C

Sec. 716.101, Health and Safety Code, provides a crematory establishment may not accept for cremation unidentified human remains.

Sec. 716.102, Health and Safety Code, requires a crematory establishment to furnish to a representative of a funeral establishment who delivers deceased human remains to the crematory establishment a receipt that includes: (1) the signature and printed name of the individual who delivered the remains; (2) the date and time of the delivery; (3) the type of cremation container in which the remains were delivered; (4) the name of the funeral establishment or other entity that contracted to provide for the cremation; (5) the name of the individual who received the human remains on behalf of the crematory; and, (6) the name of the deceased person. The crematory establishment shall retain a copy of the receipt in the crematory establishment's records.

Sec. 716.103, Health and Safety Code, requires a crematory establishment to place on the exterior of a cremation container a label with the deceased person's name as provided by the authorizing agent unless the crematory establishment knows the name is incorrect.

Sec. 716.104, Health and Safety Code, requires a funeral director or funeral establishment to provide a signed written statement to a crematory establishment that the human remains delivered to the crematory establishment were positively identified as the deceased person listed on the cremation authorization form by the authorizing agent or a representative of the authorizing agent delegated as provided by Section 716.053. An authorizing agent or the delegated representative of the agent may identify a deceased person in person or by photograph. The authorizing agent may waive the right of identification.

Subchapter D

Sec. 716.151, Health and Safety Code, requires that human remains be placed in a cremation container that is made of combustible materials suitable for cremation, provides a complete covering of the body, is resistant to leakage or spillage, is rigid for easy handling, and protects the health and safety of crematory personnel.

A crematory establishment may not remove human remains from a cremation container and must cremate the cremation container with the human remains.

Except as provided by this section, a crematory establishment may not require that deceased human remains be placed in a casket before cremation or that remains be cremated in a casket or refuse to accept for cremation remains that have not been placed

in a casket.

Sec. 716.152, Health and Safety Code, provides a crematory establishment is not required to accept a cremation container that evidences leakage of human body fluids.

A person other than a crematory establishment employee, the authorizing agent, or a representative delegated as provided by Section 716.053 and approved by the crematory establishment may not be present in a crematory area during the cremation of deceased human remains or the removal of the remains from the cremation chamber.

Immediately before placing deceased human remains in a cremation chamber, a crematory establishment employee must verify and remove the identification label from the cremation container and place the label near the cremation chamber control panel until the cremation process is complete.

To the extent practical, the crematory establishment shall remove all recoverable cremation residue from the cremation chamber following cremation and pulverize any bone fragments as necessary. The crematory establishment shall remove and dispose of any other material included with the residue.

Sec. 716.153, Health and Safety Code, provides a crematory establishment may not simultaneously cremate the deceased human remains of more than one person in the same cremation chamber unless authorized in writing by the authorizing agent of each deceased individual. A crematory establishment is not civilly or criminally liable for commingling human remains during cremation if each authorizing agent provides a signed written statement authorizing the simultaneous cremation.

Sec. 716.154, Health and Safety Code, provides a crematory establishment shall not knowingly cremate deceased human remains containing a pacemaker or other potentially hazardous implant.

An authorizing agent who knows of the existence of a pacemaker or other potentially hazardous implant in deceased human remains shall notify the funeral director and crematory establishment. The authorizing agent shall ensure that the pacemaker or other potentially hazardous implant is removed from the remains before cremation. If an authorizing agent discloses to the funeral director on the cremation authorization form the presence of a pacemaker or other potentially hazardous implant in the deceased human remains, the funeral director shall ensure that the pacemaker or other potentially hazardous implant is removed from the remains before delivering the remains to the crematory establishment. An authorizing agent or funeral director that violates either of these provisions is liable to the crematory establishment in a civil action for any damages resulting from cremation of the remains containing the pacemaker or other potentially hazardous implant.

Sec. 716.155, Health and Safety Code, requires that a crematory establishment shall place the cremated remains with proper identification in a temporary container or urn unless otherwise instructed in writing by the authorizing agent.

The crematory establishment may not commingle the cremated remains with other cremated remains or include any other objects or other materials in the temporary container or urn unless authorized in writing by the authorizing agent or as otherwise provided by this chapter.

A crematory establishment shall place a label on a temporary container that discloses the temporary container is not intended for the permanent storage of cremated remains in a

niche, crypt, cremation interment container, or interment space; includes the deceased person's name; and includes the name of the crematory establishment.

A crematory establishment shall release all cremated remains to an authorizing agent, a representative delegated as provided by Section 716.053 or an employee of the funeral establishment if the agent authorized the release on the authorization form. Any cremated remains that do not fit in a temporary container or urn must be returned to the authorizing agent, representative or the employee of the funeral establishment in a separate temporary container that meets the requirements of this section.

A crematory establishment may ship cremated remains only by a method having an internal tracking system that provides a receipt signed by the person accepting delivery. The outside of the container in which the cremated remains are placed for shipment must display a label that includes the deceased person's name, the name of the crematory establishment, and a warning that the container is temporary, if a temporary container is used.

Sec. 716.156, Health and Safety Code, requires a crematory establishment to release the cremated remains to a representative of the funeral establishment that delivered the deceased human remains to the crematory establishment, the person authorized to receive the remains on the cremation authorization form, or ship the remains to the shipping address provided by the authorizing agent on the cremation authorization form not later than the 30th day following the date of cremation.

A crematory establishment shall furnish to a person who receives the cremated remains a receipt that includes: (1) the date and time of release; (2) the printed name of the person to whom the cremated remains were released; (3) the name of the funeral establishment or other entity who contracted to provide for the cremation; (4) the printed name of the person who released the cremated remains on behalf of the crematory; and, (5) the name of the deceased person.

A crematory establishment shall retain a copy of the receipt required by this section in the crematory establishment's records.

Subchapter E

Sec. 716.201, Health and Safety Code, provides until authorized by a valid court order, a crematory establishment, funeral establishment, cemetery, or other person may refuse to accept deceased human remains or to perform a cremation if the crematory establishment, funeral establishment, cemetery, or person is aware of a dispute concerning the cremation of the remains that has not been resolved or settled, a reasonable basis for questioning any representation made by the authorizing agent, or any other lawful reason for refusing to accept or cremate the remains.

A crematory establishment, funeral establishment, cemetery, or other person aware of any dispute concerning the release or disposition of the cremated remains may refuse to release the remains until the dispute has been resolved or settled or authorized by a valid court order to release or dispose of the remains.

A crematory establishment, funeral establishment, cemetery, or other person is not liable in a civil or criminal action for refusing to accept or cremate human remains in accordance with the guidelines of this section or for refusing to release or dispose of or releasing or disposing of cremated remains in accordance with this section.

Sec. 716.202, Health and Safety Code, provides an authorizing agent who signs a cremation authorization form is subject to Section 711.002(f) and attests to the truthfulness

of the facts set forth in the form, including the identity of the deceased person and the agent's authority under this chapter and Section 711.002.

Sec. 716.203, Health and Safety Code, provides a crematory establishment, funeral establishment, funeral director, cemetery, or other person that contracts to provide for a cremation, accepts human remains, cremates human remains, or releases or disposes of the cremated remains as provided on a cremation authorization form is not criminally or civilly liable for performing the actions authorized.

A crematory establishment or funeral establishment is not criminally or civilly liable for disposing of cremated remains after the 120th day after the date of cremation in accordance with this chapter if the authorizing agent did not authorize shipment of the remains or provide a shipping address on the authorization form and the authorizing agent did not claim the remains before the 121st day following the date of cremation.

A crematory establishment is not liable for damages in a civil or criminal action for any valuables delivered with human remains if the crematory establishment exercises reasonable care in protecting the valuables.

A crematory establishment, funeral establishment, funeral director, cemetery, or other person is not liable in a civil action for the acts of a crematory establishment employee that are outside the scope of the employee's authority or responsibility or representations made by the authorizing agent or agent's representative in the cremation authorization form.

Subchapter F

Sec. 716.251, Health and Safety Code requires a crematory establishment to maintain a record at its place of business of each cremation. The record must contain the name of the deceased person, the date of the cremation, the final disposition of the cremated remains, and any other document required by this chapter. A record must be kept on file at least until the fifth anniversary of the cremation.

Subchapter G

Sec. 716.301, Health and Safety Code, provides on delivery of the cremated remains by a crematory establishment, an authorizing agent or the representative delegated by the authorizing agent as provided by Section 716.053 may transport the remains without a permit in any manner in this state and finally dispose of the cremated remains in accordance with this subchapter.

Sec. 716.302, Health and Safety Code, requires an authorizing agent to provide to a crematory establishment a signed written statement disclosing the final disposition of the cremated remains, if known. The crematory establishment shall retain a copy of the statement in the crematory establishment's records.

The authorizing agent is responsible for disposing of cremated remains.

Not earlier than the 121st day following the date of cremation, if the authorizing agent or the agent's representative has not specified the final disposition of or claimed the cremated remains, the crematory establishment or the funeral establishment if the cremated remains have been released to a representative of the funeral establishment in accordance with the authorization form may dispose of the cremated remains in accordance with this section. The crematory establishment or the funeral establishment shall retain a record of the disposition in the establishment's records.

An authorizing agent is responsible for all reasonable expenses incurred in disposing of the cremated remains under this section.

A person may dispose of cremated remains only in a crypt, niche, grave, or scattering area of a dedicated cemetery, by scattering the remains over uninhabited public land, sea, or other public waterways in accordance with Section 716.304, on private property as directed by the authorizing agent with the written consent of the property owner in accordance with Section 716.304.

Sec. 716.303, Health and Safety Code, provides unless authorized in writing by the authorizing agent, a person may not dispose of or scatter cremated remains in a manner or at a location that commingles the remains with other cremated remains, except by air over a scattering area or by sea, or place the cremated remains of more than one deceased person in the same urn or other container.

Sec. 716.304, Health and Safety Code, provides a person may scatter cremated remains over uninhabited public land, a public waterway or sea, or on the private property of a consenting owner, if the remains are reduced to a particle size of one-eighth inch or less. Unless the container is biodegradable, the cremated remains must be removed from the container before scattering.

Subchapter H

Sec. 716.351, Health and Safety Code, provides a person commits an offense if the person cremates human remains without receipt of a cremation authorization form signed by an authorizing agent, signs a cremation authorization form with actual knowledge that the form contains false or incorrect information, or represents to the public that the person may cremate human remains without being licensed as provided by Subchapter N, Chapter 651, Occupations Code. An offense under this section is a Class B misdemeanor.

- SECTION 3. Section 651.5061, Occupations Code, is amended to include a crematory.
- SECTION 4. Section 651.508, Occupations Codes, is added and states a person regulated under this chapter that violates Chapter 716, Health and Safety Code, violates this chapter.
- SECTION 5. Section 651.559, Occupations Code, is added and states a person regulated under this chapter that violates Chapter 716, Health and Safety Code, violates this chapter.
- SECTION 6. Section 651.601, Occupations Code, is amended by adding Subsection (a-1) which states the commission may bring an action for appropriate injunctive relief against a crematory establishment that violates this chapter or a rule adopted under this chapter.
- SECTION 7. The heading to Subchapter N, Chapter 651, Occupations Code, is amended to include licensing.
- SECTION 8. Section 651.651, Occupations Code, is amended to include definitions for cremation and crematory establishment and alter the definition of a perpetual care cemetery.
- SECTION 9. The reference to crematory in Section 651.652(b), Occupations Code, is deleted.
- SECTION 10. The heading to Section 651.653, Occupations Code, is amended to only refer to cemetery registration requirements.
- SECTION 11. All references to crematory in Sections 651.653(a), (b), and (d), Occupations Code, are deleted and the word individual is replaced with person.
- SECTION 12. The heading to Section 651.655, Occupations Code, is amended to refer only to the renewal of cemetery registration.

SECTION 13. The reference to crematory in Section 651.655(c), Occupations Code, is deleted.

SECTION 14. Subchapter N, Chapter 651, Occupations Code, is amended by adding Sections 651.656, 651.657, and 651.658.

Sec. 651.656, Occupations Code, provides a person may not conduct a crematory business in this state unless the person who is the owner or operator of the crematory holds a crematory establishment license issued by the commission.

Subsection (b) provides a person may not hold a crematory establishment license unless the person holds a funeral establishment license or owns or operates a perpetual care cemetery. This subsection does not apply to the owner or operator of a crematory registered with the commission on September 1, 2003.

The commission by rule shall establish the fee for a crematory establishment license under this subchapter in an amount sufficient to cover the costs of regulating crematory establishments under this subchapter, including discipline and investigation of complaints.

Sec. 651.657, Occupations Code, requires an applicant for a crematory establishment license to submit a written license application to the commission, pay the application fee, and provide proof satisfactory to the commission that the owner or operator of the crematory is trained and certified by a reputable organization approved by the commission, such as the Cremation Association of North America.

An application for a license or renewal of a license as a crematory establishment must include: (1) the full business name of the crematory establishment; (2), the address of the applicant if the business is owned by an individual, each partner if the business is a partnership, each member of the board of directors if the business is an association, or each shareholder who owns more than 25 percent of the corporate stock and each officer and director if the business is a corporation; (3), a statement from each individual named under Subdivision (2) that details the individual's business experience for the previous 10 years, any felony or misdemeanor conviction of the individual, any involvement of the individual as a defendant in a civil action involving allegations of fraud, and a suspension by this state or any other state of any license related to funeral directing or the operation of a cemetery or crematory; (4), the location of the crematory; and (5), the date the business was established.

An application for a license or renewal of a license must be on a form furnished by the commission.

Sec. 651.658, Occupations Code, requires to renew a crematory establishment license, the crematory establishment must annually file a report with the commission that lists the number of cremations performed at the crematory during the previous year, pay the license renewal fee, provide the information required by Section 651.657 or a written statement that the information has not changed since previously provided.

The commission shall mail written notice to a license holder of the impending expiration of the license not later than the 30th day before the expiration date of the license. The notice must state that to renew the license, the license holder must pay the renewal fee not later than the date on which the license expires.

A license holder who fails to pay the renewal fee on or before the expiration date is subject to a late payment penalty equal to the amount of the renewal fee.

A person may not renew a license that has been expired for more than 30 days. A person

holding a license that has been expired for more than 30 days must apply for a new license as required by this subchapter to conduct a crematory business.

The commission shall grant an extension for filing the annual report required by this section on the written request of a crematory establishment for good cause. An extension may not exceed 60 days. The commission may grant additional extensions for good cause.

The commission shall impose a \$100 late fee for each day a crematory establishment fails to submit the annual report required by this section if an extension has not been granted.

SECTION 15. Section 711.006, Health and Safety Code, entitled Limitations on Crematory Construction and Operation is repealed.

SECTION 16. Not later than November 1, 2003, the Texas Funeral Service Commission shall develop the crematory application form required for licensing and license renewal under Section 651.657, Occupations Code, as added by this Act; adopt the rules required by Section 716.002, Health and Safety Code, as added by this Act; establish the procedures and qualifications for a crematory establishment license as required by Subchapter N, Chapter 651, Occupations Code, as amended by this Act; and, determine the organizations approved to train and certify the owner or operator of the crematory as required by Section 651.658(a)(3), Occupations Code, as added by this Act.

An owner or operator of a crematory that is registered as required by Subchapter N, Chapter 651, Occupations Code, before the effective date of this Act may continue to conduct a crematory business in this state after that date in the same manner as if the crematory held a crematory establishment license under Subchapter N, Chapter 651, Occupations Code, as amended by this Act.

The owner or operator of a crematory establishment that is registered as required by Subchapter N, Chapter 651, Occupations Code, before the effective date of this Act shall comply with the licensing renewal and annual report requirements of Section 651.658, Occupations Code, as added by this Act, on the first renewal of the registration that occurs after December 31, 2003.

Subchapter N, Chapter 651, Occupations Code, as amended by this Act, and Chapter 716, Health and Safety Code, as added by this Act, apply only to the operation of a crematory establishment on or after January 1, 2004. The operation of a crematory establishment before January 1, 2004, is governed by the law in effect immediately before the effective date of this Act, and that law is continued in effect for this purpose.

The repeal by this Act of Section 711.006, Health and Safety Code, applies only to a cause of action that accrues on or after January 1, 2004. A cause of action that accrues before January 1, 2004, is governed by the law in effect at the time the cause of action accrues, and that law is continued in effect for this purpose.

SECTION 17. This act takes effect September 1, 2003, except SECTION 15, which takes effect January 1, 2004.

EFFECTIVE DATE

September 1, 2003

COMPARISON OF ORIGINAL TO SUBSTITUTE

CSHB 587 modifies HB 587 by using more specific language in several sections of the bill. The word furnace is replaced with the word retort in all instances. On any occasion the word cremation is used in referring to a human body, the phrase “of human remains” was added to bring better specificity.

The substitute removes the authority given to the Texas Funeral Service Commission to establish by rule minimum standards related to sanitation and fire protection equipment.

The substitute requires that any crematory not registered with the commission on September 1, 2003, must be adjacent to a perpetual care cemetery or funeral establishment. The original used the word adjoin instead of the phrase “adjacent to.” In relation to the construction of a crematory next to a cemetery, the word adjoin is replaced with the phrase “adjacent to,” which is defined. The substitute clarifies that such a crematory must be owned or operated by the same owner or operator of the perpetual care cemetery or funeral establishment.

The substitute further defines the requirements of the cremation authorization form and the relationship between the authorizing agent, the deceased person, and the funeral and crematory establishments.

The substitute deletes from the cremation authorization form the requirement that the cause of death be specified. The written affidavit required in the authorization form is changed to a statement. The statement must indicate if another person has an equal priority right to authorize cremation. The original version of the bill stated a superior or equal right. In the cremation authorization form the authorizing agent agrees to indemnify and hold harmless the funeral establishment and the crematory establishment for any liability arising from performing the cremation without the authorization of any person with an equal priority right.

The substitute states a crematory establishment may dispose of cremated human remains in accordance with this chapter not earlier than the 121st day following the date of cremation if the cremated remains have not been claimed by the authorizing agent. The original bill contained a requirement to keep the remains until the 60th day.

The substitute removes liability from any funeral director or representative in the event the authorizing agent provides false or misleading representations.

The substitute deletes the provision that a funeral director or other representative of a funeral establishment that contracts to provide for the cremation of deceased human remains is not required to sign a statement of intention to be cremated prepared by an individual before the individual's death.

The substitute adds language stating a crematory establishment is not liable in a civil action for relying on a cremation authorization form executed by a representative of the authorizing agent to whom authority is delegated.

The substitute clarifies that the receipt from a crematory upon the cremation of human remains be delivered to a representative of a funeral establishment and not simply an individual. A copy of the receipt shall be retained in the crematory establishment's records but not furnished to the authorized agent.

The original version of the bill requires a funeral director or funeral establishment shall provide a signed written statement to a crematory establishment that the human remains delivered to the crematory establishment were positively identified as the deceased person listed on the cremation authorization form by the authorizing agent or a representative of the authorizing agent. The substitute grants the authorizing agent the ability to waive the right of identification.

The substitute removes the right of the authorizing agent to request in writing that a crematory establishment remove human remains from a cremation container prior to cremation.

The substitute grants a crematory establishment the authority to approve an authorizing agent's representative be present during cremation.

The substitute states a crematory establishment employee must verify and remove the identification label from the cremation container prior to cremation. The original version of the bill required identifying the human remains.

The substitute clarifies that simultaneous cremation of more than one person in the same cremation chamber and the commingling of human remains must be authorized in writing by each authorizing agent.

The substitute provides a crematory establishment shall not knowingly cremate deceased human remains containing a pacemaker or other potentially hazardous implant. The original version of the bill gave discretion to the crematory.

The substitute obliges an authorizing agent who knows of the existence of a pacemaker or other potentially hazardous implant in deceased human remains to notify both the funeral director and the crematory establishment instead of either party.

The substitute provides the label on a temporary container of cremated remains also include the deceased person's name and the name of the crematory establishment.

The substitute adds a representative of the funeral establishment if the agent authorized the release on the authorization form to the list of people to whom a crematory establishment can release cremated remains.

The substitute provides if a dispute exists concerning the cremation of human remains, the release or disposition of such remains, or a reasonable basis for questioning the representation made by the authorizing agent exists, then a party may wait to act until authorized by a valid court order.

The substitute amends Sec. 716.201, Health and Safety Code, to include a crematory establishment, funeral establishment, cemetery, or other person is not liable in criminal action if he complies with the section. The original version of the bill simply exempted the party from civil liability.

The substitute clarifies the liability of an authorizing agent and reiterates his subjection to guidelines concerning the disposition of a deceased person as described in Sec. 711.002, Health and Safety Code.

The substitute includes as an express defense from a criminal or civil action a crematory establishment, funeral establishment, funeral director, cemetery, or other person accepting human remains as provided on a cremation authorization form. The original version of the bill only covered cremating human remains and releasing or disposing of the cremated remains.

The substitute includes a funeral establishment not be held criminally or civilly liable for disposing of cremated remains after the 120th day after the date of cremation in accordance with this chapter if the authorizing agent did not authorize shipment of the remains or provide a shipping address on the authorization form and the authorizing agent did not claim the remains before the 121st day following the date of cremation. The original version of the bill provided that only a crematory establishment not be held criminally or civilly liable for disposing of cremated remains and the references to days after cremation were 60 and 61, respectively.

The substitute broadens express defense to include criminal actions when a crematory establishment damages any valuables delivered with human remains if the crematory establishment exercises reasonable care in protecting the valuables. The original version of the bill only covered defense from civil actions.

The substitute ensures a crematory establishment, funeral establishment, funeral director, cemetery, or other person is not liable in a civil action for representations made by the authorizing agent or agent's representative in the cremation authorization form. The original version of the bill did not include protection from representations made by the authorizing agent's representative.

The substitute provides not earlier than the 121st day following the date of cremation, if the authorizing agent or the agent's representative has not specified the final disposition of or claimed the cremated remains, the crematory establishment or the funeral establishment may dispose of the cremated remains. The crematory establishment or the funeral establishment shall retain a record of the disposition. The original version of the bill stated the remains were eligible for disposal no earlier than the 60th day following the date of cremation, did not authorize a funeral establishment to dispose of remains in the same manner as a crematory establishment, and did not require a funeral establishment to retain a record of disposition.

The substitute removed Sec. 716.303, Health and Safety Code, due to redundancy.

The substitute requires prior to the scattering of cremated remains that they must be removed from the container unless the container is biodegradable.

The substitute removes the provision that an owner or operator of a crematory establishment licensed under Subchapter N, Occupations Code, is responsible for the conduct of the business of the crematory establishment under Chapter 716, Health and Safety Code.

The substitute amends the definition of perpetual care cemetery in Section 651.651, Occupations Code, to that of a cemetery that operates in accordance with Chapter 712, Health and Safety Code.

The substitute changes from the renewal of application to the request of an initial application the time at which a crematory establishment license must provide proof satisfactory to the commission that the owner or operator of the crematory is trained and certified by a reputable organization approved by the commission, such as the Cremation Association of North America.