

## **BILL ANALYSIS**

C.S.H.B. 1538  
By: Chisum  
Public Health  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

The Texas Funeral Service Commission (TFSC) regulates the funeral industry to protect the public from deceptive funeral practices. To accomplish its mission, TFSC: licenses about 5,000 funeral directors and embalmers, and ensures compliance with continuing education requirements; inspects and licenses 1,280 funeral homes and commercial embalming establishments; registers approximately 200 cemeteries and crematories; and investigates and resolves complaints regarding the industry from consumers or initiated by the agency.

In fiscal year 2002, TFSC, employing 12 people in Austin, operated on a \$1 million budget and collected \$1.2 million in revenue from industry fees.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Funeral Service Commission in SECTION 7 (Section 651.152, Occupations Code), SECTION 37 (Section 711.004(f), Health and Safety Code), and SECTION 39 (Section 711.012, Health and Safety Code) of this bill.

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 39 (Section 711.012, Health and Safety Code) of this bill.

It is the committee's opinion that rulemaking authority in Chapter 711, Health and Safety Code is transferred from the Texas Department of Health to the Texas Funeral Service Commission in Section 45 of this bill.

### **ANALYSIS**

The Bill continues Texas Funeral Service Commission until 2015.

The Bill does not affect the authority of the Texas Department of Banking's to enforce Chapter 154, Finance Code or to regulate perpetual care cemeteries. Perpetual care cemetery is defined. TFSC may not charge a fee to a perpetual care cemetery, including a fee for issuing or renewing a license. To renew a license for a perpetual care cemetery, the cemetery must submit a renewal on a form prescribed by the TFSC. The license is renewed on receipt of the form.

The Bill specifies that TFSC shall regulate cemetery and crematory services and may not regulate 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 closure.

The Bill establishes requirements for, and gives TFSC regulatory and enforcement authority over, the practices of cemeteries and crematories including the establishment of such facilities, inspections, license requirements, setting licensure related fees, and licensure maintenance and renewal requirements. The Bill states that an operator of a cemetery shall sign a purchase agreement for a cemetery and a licensed crematory operator shall sign a purchase agreement for a crematory. The Bill makes conforming changes to existing sections of Chapter 651, Occupations Code to include crematory operators, crematories and cemeteries where appropriate.

The Bill states that a cremation can only be performed by a licensed crematory operator. A person may not engage in the cremation business or hold themselves out as a crematory operator unless the person is

licensed. TFSC shall examine each applicant for a crematory operator's license and shall issue a license to a person who meets the licensing requirements. TFSC shall establish proficiency, professionalism, ethics, and qualifications for crematory operators. The Bill establishes application requirements, eligibility requirements, license requirements, and examination requirements and procedures for a crematory operator's license. The Bill allows TFSC to set licensure related fees for crematory operators.

The Bill establishes inspection requirements and guidelines for certain cemeteries. The inspection requirements do not apply to perpetual care cemeteries.

An applicant for a funeral director's license does not have to have graduated from an accredited school or college of mortuary science if the applicant has graduated from a funeral director program approved by the TFSC. The TFSC may not approve such a program unless it is at least six months long.

The Bill establishes additional, and alters existing, requirements for a provisional license to practice funeral directing applicant. The TFSC shall approve or deny a provisional license holder's application for a license not later than the second anniversary of the date on which the license is issued. The two-year period may be extended if the results of an examination have not been received.

The Bill allows certain case completions to serve as credit for both mortuary school or college and the provisional license holder program. A provisional license holder must list any such credit earned in the appropriate required report. The Bill establishes specific work related requirements for a provisional license holder.

The Bill deletes the requirement that the presiding officer and assistant presiding officer of the TFSC Board be public members.

The Bill requires TFSC to establish ethics standards for individuals licensed under this chapter. The Bill prohibits all persons that are regulated by TFSC from making fraudulent statements or any other type of false or misleading statements to the public concerning enumerated areas. The Bill adds to the list of unethical conduct regarding custody of a human body any violation of any state law governing the transportation, storage, refrigeration, inurement, interment, or disinterment of a dead human body. The Bills classify forgery of a physician's signature on a death certificate as a false statement.

The bill requires the presiding officer of the commission to appoint a three-member disciplinary panel to determine whether a funeral director's or embalmer's license should be temporarily suspended or restricted. Procedures and guidelines for suspension and restriction are enumerated.

The Bill requires TFSC to develop guidelines for the early involvement of consumer and industry stakeholders in its rulemaking process and to identify a method to determine who will be most affected by a proposed rule. The TFSC should identify persons affected by a proposed rule and ensure input from those persons before a rule is published in the Texas Register. The Bill requires TFSC to develop and implement a policy regarding effective use of technology in its delivery of services and provision of information to the public and for TFSC to develop a policy that encourages the use of negotiated rulemaking and alternative dispute resolution.

The Bill provides immunity, civil and administrative, for voluntary disclosure of a violation of Subchapter M, Chapter 651, Occupations Code. The bill delineates what is and isn't a voluntary disclosure, specifies when immunity does not apply, provides for civil or administrative penalties to be imposed under specified conditions, provides mitigation factors for penalties, establishes that in civil or administrative enforcement actions the person claiming immunity has the burden of establishing a prima facie case, specifies notice requirements, sets findings that would not qualify a person for immunity and requires that a violation that has been voluntarily disclosed and to which immunity applies must be identified in a compliance history report as being voluntarily disclosed.

TFSC shall adopt rules, establish procedures and prescribe forms necessary to administer and enforce Chapters 714 and 715, Health and Safety Code. The permissive authority given to TDH in Section

711.004(f), Health and Safety Code, dealing with removal of remains, is transferred to the TFSC. The TFSC has been added to the list of entities that may bring a proceeding under Section 711.007, Health and Safety Code. The TFSC has been added to the list of necessary parties that a nonprofit corporation must serve under Section 715.006, Health and Safety Code.

The Bill allows the Finance Commission of Texas to use specific remedies to enforce a specific section relating to perpetual care cemeteries. The Commissioner must follow certain procedures, make certain findings, and consider certain factors to pursue enforcement and access penalties. The Commissioner may bring a civil action and issue an order to cease and desist under certain conditions.

The bill places a 10 acre limit on family, fraternal, community cemeteries that are exempt from Chapter 712, Health and Safety Code which pertains to perpetual care cemeteries. In addition, public cemeteries owned by the state, a county, or a municipality are added to the list.

The Bill repeals Sections 651.1575, 651.302(c), 651.455(b), and 651.506(j), Occupations Code. The Bill repeals Subchapter N, Chapter 651, Occupations Code on March 1, 2004.

On September 1, 2003, all functions and activities related to Chapter 711, Health and Safety Code, performed by TDH immediately before that date are transferred to the TFSC. Housekeeping matters necessary for this transfer are enumerated.

A cemetery or crematory establishment is not required to hold a license under Chapter 651, Occupations Code, as amended by this Act, until March 1, 2004.

A crematory operator is not required to hold a license under Chapter 651, Occupations Code, as amended by this Act, until September 1, 2004.

#### **EFFECTIVE DATE**

September 1, 2003

#### **COMPARISON OF ORIGINAL TO SUBSTITUTE**

CSHB 1538 defines “perpetual care cemetery.” The substitute amends the language to give authority over perpetual care cemeteries to the Dept. of Banking. The substitute allows the governor to appoint a presiding officer who is not a public member and allows the board to elect an assistant presiding officer who is not a public member. Rulemaking in the substitute has been clarified. The substitute codifies the current 6 month funeral director licensing program that was implemented in the 80's. CSHB 1538 amends the time limit between the issuance of a provisional license and the issuance of funeral directing license to conform with the change allowing a person to begin training at a licensed establishment prior to or concurrently with the required school. The substitute also amends the current law to permit a person to begin their training under a licensed funeral director or embalmer prior to or concurrently with going to school and to receive a provisional license during this time period. CSHB 1538 amends the provisional license program to include the number of hours a week and month a provisional licensee must work under a licensed funeral director or embalmer. It also provides for the dual credit for qualifying embalming cases performed at a mortuary school. The substitute adds language to prohibit the TFSC from charging perpetual care cemeteries a licensing fee as they are already licensed and registered with the DOB. The substitute adds new language providing amnesty from penalty for violations that are corrected and self reported to the Commission. Rulemaking authority is added in the substitute to the Health and Safety Code delineating the authority of the DOB and the TFSC over cemeteries.