

BILL ANALYSIS

H.B. 1468
By: Chisum
Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The statutory regulation of the funeral industry has developed over time and in a piecemeal fashion, leaving the current regulations unclear and confusing.

H.B. 1468 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 clarifies 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.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Funeral Service Commission in SECTIONS 1 and 19 of this bill.

ANALYSIS

H.B. 1468 amends the Health and Safety Code to prohibit a cemetery organization from reselling the exclusive right of sepulture in a plot unless that right has been reacquired by the cemetery organization. The bill prohibits a sanction or other penalty from being imposed on a cemetery organization that violates the prohibition unless the Texas Funeral Service Commission provides the cemetery organization written notice of the violation and the cemetery organization does not correct the violation within a specified period. The bill prohibits a cemetery organization from making more than one interment in a plot unless each owner of the plot consents to the interment. The bill expands the rulemaking authority of the commission to include enforcement of provisions relating to multiple interments in the same cemetery plot.

H.B. 1468 authorizes a crematory establishment to accept deceased human remains for refrigeration before it receives authorization to cremate the remains. The bill provides an exception to cremation authorization form requirements if the deceased person has left written directions for the disposition by cremation of the decedent's human remains and the authorizing agent refuses for any reason to sign an authorization form. The bill authorizes a crematory establishment to cremate the remains without receipt of an authorization form if the cremation costs are paid and positive written identification that the human remains to be cremated are those of the decedent is provided by the authorizing agent. The bill requires a crematory establishment to place with the cremated remains, in a 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. The bill specifies that bone fragments required to be pulverized following a cremation are to be pulverized to a particle size of one-eighth inch or less. The bill adds a release according to written directions for the disposition by cremation of the deceased person's human remains to the methods by which a crematory establishment is required to release cremated remains.

H.B. 1468 establishes immunity from criminal and civil liability for a cemetery organization, a business operating a crematory or columbarium, a funeral director, an embalmer, or a funeral establishment cremating the human remains of a deceased person or carrying out the written directions of the deceased person if the deceased person left written instructions for the disposition of the decedent's human remains and an authorizing agent refuses for any reason to sign a cremation authorization form. The bill removes the condition that remains be reduced to a particle size of one-eighth inch or less for a person to be authorized to scatter the remains over uninhabited public land, over a public waterway or sea, or on the private property of a consenting owner. The bill makes it a Class B misdemeanor offense for a person to cremate human remains without receipt of written directions for the disposition by cremation of the deceased person's human remains. The bill defines "cemetery organization" and "embalmer" by reference.

H.B. 1468 amends the Occupations Code to add a crematory to the list of establishments for which the commission is required to set a license fee, renewal fee, and late renewal penalty. The bill specifies that a subpoena or subpoena duces tecum issued by the commission is not effective unless it is issued in compliance with state and federal law and commission rules. The bill removes the prohibition on renewing a license that has been expired for one year or more to authorize such a renewal if the applicant retakes and passes the applicable examination, pays any applicable fees, including a renewal fee that is equal to two times the normally required renewal fee, and completes any required continuing education. The bill authorizes a person whose license has been suspended to renew the license by paying to the commission a renewal fee that is two times the normally required renewal fee in addition to any penalty assessed by the commission. The bill extends the waiting period before which an application to the commission for the reissuance of a revoked license may be made, from not before the first anniversary to not before the third anniversary of the date of the revocation. The bill adds payment of a fee and satisfaction of other commission requirements including requirements relating to continuing education to the conditions that must be met before a revoked license may be reinstated. The bill requires the commission by rule to prescribe reporting requirements for provisional license holders.

H.B. 1468 clarifies that the conditions for displaying a casket in a funeral establishment's casket showroom. The bill exempts a perpetual care cemetery from cemetery establishment licensing requirements. The bill, in a provision related to the commission's required notice of license renewal, changes from September 30 to the license expiration date the deadline for payment of a cemetery or funeral establishment license renewal fee. The bill prohibits a funeral establishment and a crematory establishment whose license has been expired for longer than 30 days from operating until a renewal fee and late payment penalty are paid, rather than prohibiting the establishment from renewing the license and requiring the establishment be issued a new license in the manner provided for issuing an original license. The bill requires the Texas Department of Banking to provide annually to the commission a list of perpetual care cemeteries, including the address and other contact information for each cemetery, and requires the commission to annually register each perpetual care cemetery on that list. The bill requires the department to provide the initial list to the commission not later than January 1, 2010. The bill exempts a perpetual care cemetery from a registration and renewal fees.

H.B. 1468 establishes that a person licensed in a cemetery and crematory services, funeral directing, and embalming does not commit a violation 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 as provided by provisions of other law. The bill makes technical corrections relating to disciplinary proceedings for multiple violations.

H.B. 1468 repeals Section 716.004(b), Health and Safety Code, relating to the waiting period for cremation. The bill repeals the following sections of the Occupations Code:

- Section 651.304(b) and (c), relating to employment reports by a provisional license holder;
- Section 651.651(3), relating to the definition of perpetual care cemetery; and
- Section 651.656(d), relating to a crematory establishment license fee.

EFFECTIVE DATE

September 1, 2009.