

BILL ANALYSIS

Senate Research Center

S.B. 2040
By: Springer et al.
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Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Anatomical Board of the State of Texas (SAB) oversees the distribution and use of donated or unclaimed deceased bodies by willed body programs (WBPs) at higher education institutions for use in research, education, and training. Additionally, statute allows these programs to transfer bodies to other anatomical facilities, including medical training facilities, medical device companies, search and rescue organizations, and other higher education institutions that do not operate their own WBPs. Today, Texas has 13 WBPs and 82 other anatomical facilities subject to board oversight and periodic inspection.

The Sunset Advisory Commission reviewed SAB during the 2020–2021 biennium, but its Sunset bill did not pass during the 87th Legislative Session. Instead, the legislature placed SAB under full Sunset review again during the 2022-2023 biennium. In this second review of SAB, Sunset found many of the same previously identified problems and again determined while the state continues to have an interest in overseeing whole body donations, SAB cannot continue to perform this oversight effectively. The Sunset Advisory Commission also considered how statute addresses non-transplant anatomical donation organizations (NADOs), which are whole body donation programs unaffiliated with higher education institutions.

The Sunset Advisory Commission recommends abolishing SAB as a stand-alone board and transferring its functions to the Texas Funeral Service Commission (TFSC). As part of this recommendation, WBPs and NADOs would register with TFSC, and statute would require NADOs to be accredited by the American Association of Tissue Banks.

(Original Author's/Sponsor's Statement of Intent)

S.B. 2040 amends current law relating to the continuation and transfer of the regulation of willed body programs to the Texas Funeral Service Commission, the regulation of willed body programs, non-transplant anatomical donation organizations, and anatomical facilities, and the creation of the State Anatomical Advisory Committee; requires registration; authorizes fees; and authorizes an administrative penalty.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Anatomical Board of the State of Texas is transferred to the Texas Funeral Service Commission in SECTION 1.07 (Section 691.010, Health and Safety Code), SECTION 1.08 (Section 691.022, Health and Safety Code), SECTION 1.17 (Section 691.031, Health and Safety Code), SECTION 1.19 (Section 691.033, Health and Safety Code), and SECTION 3.01 of this bill.

Rulemaking authority is expressly granted to the Texas Funeral Service Commission in SECTION 1.06 (Section 691.008, Health and Safety Code), SECTION 1.08 (Section 691.022, Health and Safety Code), SECTION 1.14 (Section 691.028, Health and Safety Code), and SECTION 1.20 (Section 691.034, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the Anatomical Board of the State of Texas is rescinded in SECTION 1.23 (Section 691.007, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

ARTICLE 1. STATE ANATOMICAL ADVISORY COMMITTEE; TEXAS FUNERAL SERVICE COMMISSION

SECTION 1.01. Amends the heading to Chapter 691, Health and Safety Code, to read as follows:

CHAPTER 691. DONATION OF BODIES AND ANATOMICAL SPECIMENS

SECTION 1.02. Amends the heading to Subchapter A, Chapter 691, Health and Safety Code, to read as follows:

SUBCHAPTER A. GENERAL PROVISIONS; STATE ANATOMICAL ADVISORY COMMITTEE

SECTION 1.03. Amends Section 691.001, Health and Safety Code, by amending Subdivision (1) and adding Subdivisions (1-a), (4), (5), and (6) to define "advisory committee," "anatomical facility," "commission," "non-transplant anatomical donation organization," and "willed body program" and to delete the definition of "board."

SECTION 1.04. Amends Section 691.002, Health and Safety Code, as follows:

Sec. 691.002. New heading: **ADVISORY COMMITTEE**. (a) Provides that the State Anatomical Advisory Committee (advisory committee) is established to advise and provide expertise to the Texas Funeral Service Commission (TFSC) on matters related to the regulation and operation of willed body programs, non-transplant anatomical donation organizations, and anatomical facilities in this state.

(b) Provides that the advisory committee is composed of seven members appointed by TFSC as follows:

- (1) two members who represent institutions of higher education that operate willed body programs;
- (2) two members who represent non-transplant anatomical donation organizations;
- (3) two members who represent anatomical facilities; and
- (4) one public member.

Deletes existing text providing that the Anatomical Board of the State of Texas (SAB) is composed of one representative from each school or college of chiropractic, osteopathy, medicine, or dentistry incorporated in this state.

(c) Provides that members of the advisory committee serve two-year terms.

Deletes existing Subsection (b) requiring the chief executive officer of each institution described by Subsection (a), on March 1 of each odd-numbered year, to appoint as the institution's representative on SAB one professor of surgery or of basic anatomical sciences who is associated with the institution.

(d) Authorizes an advisory committee member to be reappointed.

(e) Requires appointments to the advisory committee, rather than to SAB, to be made without regard to the race, creed, sex, religion, or national origin of appointees.

(f) Provides that Sections 2110.002 (Composition of Advisory Committees) and 2110.008 (Duration of Advisory Committees), Government Code, do not apply to the advisory committee.

SECTION 1.05. Redesignates Section 691.007(c), Health and Safety Code, as Section 691.011, Health and Safety Code, and amends it as follows:

Sec. 691.011. RECORDS. Requires TFSC, rather than SAB, to keep identification records of each body donated to TFSC and of each body or anatomical specimen distributed by TFSC. Makes conforming changes.

SECTION 1.06. Redesignates Section 691.008(a), Health and Safety Code, as Section 691.012, Health and Safety Code, and amends it as follows:

Sec. 691.012. FEES. (a) Authorizes TFSC by rule, rather than SAB, to set and collect fees in amounts reasonable and necessary to cover the cost of administering this chapter, including fees for:

- (1) creates this subdivision from existing text;
- (2) conducting inspections and other verification activities authorized under Section 691.034; and
- (3) registering willed body programs and non-transplant anatomical donation organizations.

(b) Provides that a non-transplant anatomical donation organization is exempt from a fee described by Subsection (a)(1).

SECTION 1.07. Amends Section 691.010, Health and Safety Code, as follows:

Sec. 691.010. PUBLIC INFORMATION AND PARTICIPATION; COMPLAINTS. (a) Requires TFSC, rather than SAB, to prepare information of public interest describing the functions of TFSC under this chapter, rather than functions of SAB, and TFSC's, rather than SAB's, procedures by which complaints are filed with and resolved by TFSC. Makes conforming changes.

(b) Makes conforming changes to this subsection.

(c) Requires TFSC to periodically notify the parties to the complaint of the status of the complaint, if a written complaint is filed with TFSC relating to a person or entity regulated by TFSC under this chapter, until final disposition unless notice would jeopardize an undercover investigation. Deletes existing text requiring the notification to be at least as frequent as quarterly and until final disposition of the complaint. Makes conforming changes.

(d) Makes conforming changes to this subsection.

SECTION 1.08. Amends Section 691.022, Health and Safety Code, as follows:

Sec. 691.022. GENERAL DUTIES. (a) Requires TFSC to distribute bodies and anatomical specimens to persons authorized to receive a body or specimen under this chapter. Provides that this subsection does not apply to a body or specimen donated to a registered non-transplant anatomical donation organization. Makes conforming and nonsubstantive changes.

(b) Requires TFSC to adopt rules to ensure that each body and anatomical specimen is treated with respect while in the custody of TFSC or person authorized to receive the body or specimen. Deletes existing text requiring SAB to adopt rules to ensure that each body and anatomical specimen in the custody of

SAB or an institution represented on SAB is treated with respect. Makes conforming changes.

(c) Requires TFSC to adopt rules, establish procedures, and prescribe forms necessary to administer and enforce this chapter, including rules establishing registration and inspection requirements and procedures. Authorizes TFSC to issue a reprimand, assess an administrative penalty, impose other penalties, or revoke, suspend, or probate a registration or other authorization for a violation of this chapter or a TFSC rule adopted under this chapter, including a violation related to an inspection conducted under Section 691.034, in the manner provided by Chapter 651 (Crematory Services, Funeral Directing, and Embalming), Occupations Code.

SECTION 1.09. Amends Section 691.0225, Health and Safety Code, as follows:

Sec. 691.0225. INFORMATIONAL DOCUMENT. Requires TFSC to develop a document to inform a person making a gift of a decedent's body or anatomical specimen about the options for donation authorized under this chapter, rather than for purposes of education, including forensic science education, or research of the risks and benefits associated with donation. Requires TFSC to make the document available on TFSC's Internet website. Makes conforming changes.

SECTION 1.10. Amends Section 691.023, Health and Safety Code, as follows:

Sec. 691.023. New heading: DUTY TO DELIVER CERTAIN BODIES TO COMMISSION. (a)-(b) Makes conforming changes to these subsections.

SECTION 1.11. Amends Section 691.025(c), Health and Safety Code, to make a conforming change.

SECTION 1.12. Amends Section 691.026, Health and Safety Code, to make a conforming change.

SECTION 1.13. Amends Section 691.027, Health and Safety Code, to make conforming changes.

SECTION 1.14. Amends Section 691.028, Health and Safety Code, by amending Subsection (a) and (b) and adding Subsection (b-1), as follows:

(a) Authorizes an adult living in this state who is of sound mind to donate the adult's body by will or other instrument to TFSC, a willed body program of a medical or dental school, a non-transplant anatomical donation organization, or another donee authorized by TFSC to be used for the advancement of medical or forensic science. Makes conforming changes.

(b) Provides that the donor is required to provide informed consent by signing the will or other written instrument which is required to be witnessed by two adults to be effective. Provides that the donor is not required to use a particular form or particular words in making the donation, but the will or other instrument is required to clearly convey:

(1) creates this subdivision from existing text; and

(2) the donor's acknowledgment that the donor was informed about:

(A) the consequences of the donation before providing consent;

(B) the use the donee plans for the donated body parts; and

(C) if applicable, any body part and the condition in which the body part will be returned to the person designated by the donor.

(b-1) Requires the donor to be informed in writing about the information described by Subsection (b)(2) in a clear manner on a single piece of paper that is 8-1/2 by 11 inches with 14-point type for the purposes of Subsection (b). Requires TFSC by rule to design and adopt a form that complies with this subsection that willed body programs and non-transplant anatomical donation organizations must use.

SECTION 1.15. Amends Section 691.029, Health and Safety Code, as follows:

Sec. 691.029. New heading: **AUTHORITY TO RECEIVE, DISTRIBUTE, AND TRANSFER BODIES OR ANATOMICAL SPECIMENS.** Authorizes TFSC to receive, distribute, and transfer a body or anatomical specimen from inside or outside this state. Deletes existing text authorizing SAB to receive a body transported to SAB from outside the state. Makes conforming changes.

SECTION 1.16. Amends Section 691.030, Health and Safety Code, as follows:

Sec. 690.030. New heading: **COMMISSION'S AUTHORITY TO DISTRIBUTE BODIES AND ANATOMICAL SPECIMENS.** (a) Provides that TFSC or TFSC's representative is required to distribute bodies donated to it and is authorized to redistribute bodies donated to medical or dental schools or other donees authorized by TFSC to certain entities, including willed body programs of schools and colleges of chiropractic, osteopathy, medicine, or dentistry incorporated in this state and anatomical facilities. Makes conforming and nonsubstantive changes.

(b)-(d) Makes conforming changes to these subsections.

(e) Provides that this section does not apply to a body or anatomical specimen donated to a registered non-transplant anatomical donation organization.

SECTION 1.17. Amends Sections 691.031(a), (b), and (f), Health and Safety Code, as follows:

(a) Requires TFSC to adopt rules to ensure that:

(1) each body or anatomical specimen received or distributed under this chapter, rather than by SAB, is properly transported;

(2) a label with a statement that the container's contents are derived from human tissue is affixed to the container in which the body or anatomical specimen is transported, rather than a label with the statement "CONTENTS DERIVED FROM DONATED HUMAN TISSUE" is affixed to the container in which the body or anatomical specimen is transported; and

(3) makes a conforming change to this subdivision.

Makes conforming changes.

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

SECTION 1.18. Amends Section 691.032, Health and Safety Code, to make a conforming change.

SECTION 1.19. Amends Sections 691.033(a), (b), and (d), Health and Safety Code, as follows:

(a) Authorizes a willed body program, non-transplant anatomical donation organization, anatomical facility, or other person designated by TFSC, rather than a school, college, or person designated by SAB, to use, dissect, operate on, examine, and experiment on a body or anatomical specimen distributed under this chapter to further medical or forensic science.

(b) Requires a willed body program, non-transplant anatomical donation organization, or other person to keep a permanent record of each body or anatomical specimen received from TFSC or TFSC's representative. Provides that the record:

- (1) creates this subdivision from existing text and makes nonsubstantive changes;
- (2) is required to track the body or anatomical specimen from intake to final disposition; and
- (3) makes conforming changes to this subdivision.

Makes conforming changes.

(d) Makes conforming changes to this subsection.

SECTION 1.20. Amends Section 691.034, Health and Safety Code, as follows:

Sec. 691.034. New heading: REGULATION AND REGISTRATION OF PERSONS AND INSTITUTIONS USING BODIES AND ANATOMICAL SPECIMENS. (a) Prohibits a willed body program or non-transplant anatomical donation organization from operating in this state unless the program or organization registers with TFSC in the form and manner prescribed by TFSC.

(a-1) Requires a non-transplant anatomical donation organization to be accredited by the American Association of Tissue Banks under the association's Standards for Non-Transplant Anatomical Donation to be eligible for registration under this section. Authorizes TFSC to issue conditional registration to a non-transplant anatomical donation organization that is not yet accredited.

(a-2) Provides that TFSC is required to inspect and is authorized to approve willed body programs and anatomical facilities, rather than institutions and other persons, for the receipt and use of bodies and anatomical specimens under this chapter. Makes a conforming change.

(a-3) Requires TFSC to establish a process to periodically verify a non-transplant anatomical donation organization's compliance with the Standards for Non-Transplant Anatomical Donation published by the American Association of Tissue Banks. Provides that the process:

(1) is authorized to authorize TFSC to inspect a non-transplant anatomical donation organization and;

(2) is prohibited from being duplicative of the accreditation process described by Subsection (a-1) or occurring more frequently than once every five years.

(b) Authorizes TFSC to investigate a willed body program, non-transplant anatomical donation organization, anatomical facility, or other person, rather than a person or institution, if TFCS has reason to believe that the program, organization, facility, or person has improperly used a body or anatomical specimen. Makes conforming changes.

(b-1) Authorizes TFSC to inspect a non-transplant anatomical donation organization as part of an investigation described by Subsection (b).

(c) Authorizes TFCS to suspend or revoke a willed body program's, non-transplant anatomical donation organization's, anatomical facility's, or other person's registration or other authorization to receive and use or dissect bodies or anatomical specimens if TFSC determines that the program, organization, facility,

or person has improperly used a body or anatomical specimen. Makes conforming changes.

(d) Provides that a willed body program, non-transplant anatomical donation organization, anatomical facility, or other person is entitled to a hearing before TFSC or a hearing examiner appointed by TFSC before TFSC is authorized to revoke the program's, organization's, facility's, or person's registration or other authorization to receive and use or dissect bodies or anatomical specimens. Requires TFSC to make all final decisions to suspend or revoke an authorization. Makes conforming changes.

(e) Requires a registered non-transplant anatomical donation organization to inform TFSC within the time prescribed by TFSC rule if the organization loses its accreditation with the American Association of Tissue Banks.

(f) Prohibits a TFSC member or holder of any license issued by TFSC from holding more than an ownership interest in a registered non-transplant anatomical donation organization.

(g) Requires TFSC to adopt rules and procedures necessary to administer this section.

SECTION 1.21. Amends Subchapter A, Chapter 651, Occupations Code, by adding Section 651.005, as follows:

Sec. 651.005. REGULATION OF WILLED BODY PROGRAMS, NON-TRANSPLANT ANATOMICAL DONATION ORGANIZATIONS, AND ANATOMICAL FACILITIES. Requires TFSC to regulate willed body programs, non-transplant anatomical donation organizations, and anatomical facilities as provided by Chapter 691, Health and Safety Code, and in accordance with the powers and duties granted by Chapter 651 (Crematory Services, Funeral Directing, and Embalming) to the extent necessary to regulate the programs, organizations, and facilities under that chapter.

SECTION 1.22. Amends Section 651.057(a), Occupations Code, as follows:

(a) Requires the governor to designate one member of TFSC as the presiding officer of TFSC to serve in that capacity at the pleasure than at the governor, rather than for three years. Deletes existing text requiring the governor to alternate between public and nonpublic members in designating presiding officers.

SECTION 1.23. Repealers: Sections 691.003 (Sunset Provision) and 691.004 (Lobbyist Restrictions), Health and Safety Code.

Repealers: Sections 691.005 (Removal of Board Member) and 691.006 (Reimbursement), Health and Safety Code.

Repealers: Sections 691.007(a) (relating to authorizing SAB to adopt rules for its administration) and (b) (relating to requiring SAB to keep complete minutes of its transactions), Health and Safety Code.

Repealer: Section 691.007(d) (relating to authorizing a SAB member or a district or county attorney to inspect minutes or records required under this section at any time), Health and Safety Code.

Repealers: Sections 691.008(b) (relating to authorizing the secretary-treasurer of SAB to deposit fees collected under this section in local accounts outside the state treasury) and (d) (relating to providing that financial transactions of SAB are subject to audit by the state auditor), Health and Safety Code.

Repealer: the headings to Sections 691.007 (Minutes; Records) and 691.008 (Fees; Audits), Health and Safety Code.

Repealer: Section 691.009 (Information to Members and Employees), Health and Safety Code.

ARTICLE 2. CONFORMING AMENDMENTS

SECTION 2.01. Amends Article 43.25, Code of Criminal Procedure, as follows:

Art. 43.25. BODY OF CONVICT. Requires the body of a convict who has been legally executed to be embalmed immediately and so directed by the director of the correctional institutions division of the Texas Department of Criminal Justice (TDCJ), rather than the Texas Department of Corrections. Requires the body, if it is not demanded or requested by a relative or bona fide friend within forty-eight hours after execution, to be delivered to TFSC, rather than SAB, if requested by TFSC, rather than SAB. Makes conforming and nonsubstantive changes.

SECTION 2.02. Amends Section 404.093(b) Government Code, as follows:

(b) Deletes existing text providing that Subchapter F (State Funds Reform Act) does not apply to funds under the management of the secretary-treasurer of SAB, as provided by Section 691.008, Health and Safety Code. Makes nonsubstantive changes.

SECTION 2.03. Amends Sections 692A.011(a), (b), and (c), Health and Safety Code, as follows:

(a) Authorizes an anatomical gift to be made to certain persons named in the document of gift, including TFSC or a non-transplant anatomical donation organization, rather than SAB. Makes conforming changes.

(b) Requires TFSC or a non-transplant anatomical donation organization, rather than SAB, to be the donee of gifts of bodies or parts of bodies made for the purposes of education or research that are subject to distribution by TFSC or the organization under Chapter 691, except for donations described by Subsections (a)(1) through (6). Makes conforming changes.

(c) Makes a conforming change to this subsection.

ARTICLE 3. TRANSITIONS AND EFFECTIVE DATE

SECTION 3.01. (a) Provides that SAB is abolished but continues in existence until September 1, 2024, for the sole purpose of transferring obligations, property, rights, powers, and duties to TFSC. Provides that TFSC assumes all of the obligations, property, rights, powers, and duties of SAB as they exist immediately before the effective date of this Act. Provides that all unexpended and unobligated funds under the management of the secretary-treasurer of SAB, as provided by Section 691.008, Health and Safety Code, as that section existed immediately before the effective date of this Act, are transferred to the general revenue fund for the purpose of TFSC administering duties under Chapter 691, Health and Safety Code, as amended by this Act.

(b) Requires SAB and TFSC, in consultation with appropriate state entities, to ensure that the transfer of the obligations, property, rights, powers, and duties of SAB to TFSC is completed not later than September 1, 2024.

(c) Provides that all rules of SAB are continued in effect as rules of TFSC until superseded by a rule of TFSC. Provides that an authorization issued by SAB is continued in effect as provided by the law in effect immediately before the effective date of this Act. Provides that an authorization pending on the effective date of this Act is continued without change in status after the effective date of this Act. Provides that a complaint, investigation, or other proceeding pending on the effective date of this Act is continued without change in status after the effective date of this Act.

(d) Provides that a reference to SAB in a law or administrative rule means TFSC, unless the context indicates otherwise.

(e) Provides that the terms of the members of SAB expire on September 1, 2024.

(f) Requires TFSC, for the state fiscal year ending August 31, 2024, to quarterly prepare and submit to the lieutenant governor, the speaker of the house of representatives, the Sunset Advisory Commission, and each standing committee of the legislature with primary jurisdiction over TFSC a report on the progress of the transfer described by Subsection (a) of this section.

(g) Requires TFSC to submit to the Sunset Advisory Commission and each standing committee of the legislature with primary jurisdiction over TFSC, not later than December 1, 2024, any legislative recommendation necessary to improve TFSC's administration of Chapter 691, Health and Safety Code, as amended by this Act.

SECTION 3.02. (a) Requires TFSC to appoint members to the advisory committee in accordance with Section 691.002, Health and Safety Code, as amended by this Act, not later than the 60th day after the effective date of this Act.

(b) Requires the members of SAB whose terms expire under Section 3.01 of this Act to continue to provide advice to TFSC until a majority of the members of the advisory committee are appointed under Subsection (a) of this section and qualified. Provides that a member of SAB described by this subsection is authorized to be appointed to the advisory committee if the member is otherwise eligible for appointment under Section 691.002, Health and Safety Code, as amended by this Act.

SECTION 3.03. Effective date: September 1, 2023.