

BILL ANALYSIS

C.S.H.B. 1540
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Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

The Texas Funeral Service Commission (TFSC) regulates the funeral and death care industry in Texas by licensing and overseeing funeral directors, embalmers, crematories, and certain cemeteries and is subject to the Texas Sunset Act. C.S.H.B. 1540 seeks to continue the TFSC, standardize licensing requirements, clarify the TFSC's authority to protect the public, and discontinue the TFSC's regulation of certain cemeteries that are not perpetual care cemeteries.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Funeral Service Commission in SECTIONS 14, 18, 23, 24, and 35 of this bill.

ANALYSIS

C.S.H.B. 1540 amends the Occupations Code to postpone from September 1, 2019, to September 1, 2031, the date on which the Texas Funeral Service Commission (TFSC) is abolished and statutory provisions relating to crematory services, funeral directing, and embalming expire unless continued in existence as provided by the Texas Sunset Act. The bill revises provisions relating to commission membership and commission member training, sets out provisions relating to that required training, and provides for certain additional training for board members serving immediately before the effective date of the bill.

C.S.H.B. 1540 takes the following actions with regard to the administration of the TFSC:

- authorizes the TFSC to appoint advisory committees to perform assigned functions and subjects such an advisory committee to Government Code provisions relating to state agency advisory committees;
- revises the TFSC's fee-setting authority to require the TFSC by rule to establish fees in amounts reasonable and necessary to cover the costs of administering provisions relating to crematory services, funeral directing, and embalming;
- reduces the frequency at which a licensed crematory or funeral establishment must be inspected from at least once every two years to at least once every three years;
- effective September 1, 2020, changes the frequency at which the TFSC must submit a report describing its activities from biennially to annually and sets out provisions relating to the required content and posting of the report;
- establishes that a license issued under statutory provisions relating to crematory services, funeral directing, and embalming, other than a provisional license, is valid for one or two

years as provided by TFSC rule and replaces the authorization for the TFSC to adopt a staggered license renewal process with a requirement to do so;

- revises provisions relating to the confidentiality of complaint information and expressly does not require the TFSC to release the identity of a complainant who will not testify at a hearing;
- revises and updates statutory provisions relating to an application by an out-of-state holder of a funeral director's license or an embalmer's license and to a duplicate license and repeals provisions relating to provisional licenses; and
- authorizes the TFSC to determine by rule the criteria by which a funeral establishment is exempt from the requirement to have a preparation room for embalming services.

C.S.H.B. 1540 exempts pickup of a dead human body that does not occur on the first call from applicable supervision requirements and clarifies when first call occurs. The bill authorizes a dead human body to be transferred without a funeral director directing the transfer at the direction of a justice of the peace or other law enforcement official and authorizes a funeral director to direct an unlicensed person, a provisional license holder, or an embalmer in the removal of a dead human body.

C.S.H.B. 1540 establishes that a funeral establishment or crematory, or a person acting on behalf of the establishment or crematory, is in violation of provisions relating to crematory services, funeral directing, and embalming, as applicable, if such an establishment, crematory, or person allows or assists an unlicensed person to engage in an activity requiring licensure. The bill authorizes the TFSC to bring an action for appropriate injunctive relief against an unlicensed person to enjoin a violation of those provisions or a rule adopted under those provisions.

C.S.H.B. 1540 authorizes the TFSC to order a license holder to pay a refund to a person harmed by a license holder violation or failure to fulfill the terms of a purchase agreement with the person and prohibits the refund from exceeding the actual amount paid by the person to the license holder.

C.S.H.B. 1540 establishes that the application form for renewal of a license as a crematory establishment must allow the applicant to provide a written statement that the information previously provided to the TFSC on application for an original or renewal license has not changed, if applicable. The bill revises the application for a license renewal and changes the fee imposed for late filing of the required annual report required from \$100 per day to an amount provided by TFSC rule.

C.S.H.B. 1540 amends the Health and Safety Code to remove the authority of the TFSC to regulate certain cemeteries that are not perpetual care cemeteries. The bill expands the attorney general's authority to bring an action for injunctive relief to enforce general provisions relating to cemeteries or a rule or order adopted by the TFSC under such provisions by removing the specification that the authority to bring such action is triggered by a request of the TFSC.

C.S.H.B. 1540 repeals the following provisions of the Occupations Code:

- Sections 651.154(b) and (c)
- Section 651.1571
- Section 651.203(b)
- Section 651.2595
- Section 651.353
- Section 651.355
- Section 651.4065(c)

EFFECTIVE DATE

Except as otherwise provided, September 1, 2019.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 1540 may differ from the original in minor or nonsubstantive ways, the following summarizes the substantial differences between the introduced and committee substitute versions of the bill.

The substitute replaces the authorization for the TFSC to adopt a staggered license renewal process with a requirement to do so and includes a provision establishing that the TFSC is not required to release the identity of a complainant who will not testify at a hearing. The bill revises and updates requirements for a funeral director to direct the removal of a dead human body and clarifies when first call occurs.

The substitute removes a provision relating to the eligibility of an applicant for a funeral director or embalming license who is an out-of-state license holder with respect to a conviction of a felony in the 10 years preceding the date of the application and repeals provisions relating to provisional licenses for an out-of-state license holder.