

SUBJECT: Regulation of crematories

COMMITTEE: Public Health — committee substitute recommended

VOTE: 8 ayes — Capelo, Laubenberg, Coleman, Dawson, McReynolds, Naishtat,
Taylor, Zedler

0 nays

1 absent — Truitt

WITNESSES: For — Lee Longino, III, Service Corporation International, Texas Funeral
Director's Association; Chris Inabnett, Stewart Enterprises, Inc.; (*Registered,
but did not testify:*) Janis Carter, Texas Funeral Directors Association;
Johnnie B. Rogers, Jr., Service Corporation International

Against — None

On — O.C. (Chet) Robbins, Texas Funeral Service Commission; (*Registered,
but did not testify:*) Debra F. Owens, Texas Department of Health and Bureau
of Vital Statistics

BACKGROUND: HB 3067 by Chisum, the Texas Funeral Service Commission (FSC) Sunset
Act enacted by the 77th Legislature, expanded the regulatory authority of the
FSC to include crematories. The FSC's may inspect a cemetery or crematory
only following a complaint about a specific establishment. The FSC is up for
Sunset review again this session.

Subtitle L, Chapter 651, Occupations Code governs the FSC. The FSC
regulates funeral services, cemeteries, and crematories. It has the authority to
revoke a license without a hearing if the licence holder has been convicted of
a felony related to any activity that the commission regulates, such as
embalming or funeral directing.

Title 8C, Chapters 711-715 of the Health and Safety Code regulate death-
related services. Section 711.001 defines a funeral establishment as a place of
business used in the care and preparation of human remains for interment or

transportation or where one or more persons is engaged in the business of embalming or funeral directing. A perpetual care cemetery is a cemetery for which a perpetual care fund has been set up, which excludes facilities such as family, fraternal, community, and church cemeteries.

Section 711.006 sets standards for crematory construction and operation, such as requiring that crematories reside in burial parks, tracts of land used as places for grave burials. A crematory may dispose of a decedent's remains by delivering them to a person or funeral establishment that has contracted for cremation or by interring the remains in a plot. If the crematory interrs the remains, it must contact the funeral establishment or person that it contracted with for cremation within 90 days after cremation to notify them of the interment.

Pursuant to Section 711.002 of the Health and Safety Code, unless a decedent has left written instructions for the disposition of his or her remains, certain persons are authorized to direct the disposition. They are, in priority order, the person designated in writing by the decedent, a surviving spouse, any surviving adult child, either surviving parent, any surviving adult sibling, or any adult in the next degree of kinship under inheritance laws.

Human remains need not be placed in a coffin for cremation and may be placed in any container that is sturdy enough to protect the crematory operator from stray bodily fluids while preserving the respect and dignity of the deceased.

In February 2002 in Noble, Georgia, 334 dead bodies were discovered stuffed in vaults, stacked in storage sheds, buried in shallow pits, and dumped in a lake. Instead of cremating these bodies as agreed, the owner of Tri-State Crematory allegedly gave the families burned wood chips, cement dust, or someone else's remains and pocketed the money. Following this incident, the Georgia Legislature has enacted laws strengthening crematory regulation rules and making it a felony to abandon a corpse.

DIGEST:

CSHB 587 would authorize the FSC to adopt rules governing the cremation of human remains. It would require that all crematories registering with the FSC after September 1, 2003, be adjacent to a perpetual care cemetery or funeral establishment and be owned or operated by a person that owned or operated

the perpetual care cemetery or funeral establishment. If the crematory was not also a funeral establishment, it would not be able to accept remains for cremation until authorized by a justice of peace or medical examiner.

Cremation authorization form. The bill would require the decedent's authorized agent to complete and sign a cremation authorization form before a cremation could take place. The form would identify the decedent, the authorized agent, the person contracting for cremation services, and the person or funeral home authorized to receive the cremated remains. It would declare that the remains did not contain a pacemaker or other hazardous materials, list any valuables delivered with the body and how to handle them, specify whether a viewing of the body had been scheduled prior to cremation, and include details about the permanent disposition of the remains.

CSHB 587 would allow an authorized agent to delegate his or her duties in writing to another person. The bill would preclude a crematory from civil liability for relying on an authorization form executed by an authorized agent or the agent's representative.

Rules governing cremation and disposition. The bill would require a 48-hour waiting period after the time of death before a body could be cremated unless the waiting period was waived by a justice of the peace or medical examiner or if a court order was entered.

The bill would require crematories to maintain records and identifying information for each cremation. A crematory could not accept unidentified human remains for cremation. A funeral establishment delivering a body to a crematory would have to positively identify the decedent as the person listed on the cremation authorization form, and the crematory would have to issue a receipt to this effect to the funeral establishment upon delivery. Information establishing the identification of the decedent would be required to follow the decedent through all stages of the cremation process, and the container used to store the cremated remains for delivery to the authorized agent would have to be labeled properly. A crematory would be required to maintain a record of each cremation for at least five years.

The bill would require that the human remains be placed in a durable and combustible cremation container that would not have to be a casket. A

crematory could not refuse to accept remains simply because they were not contained in a casket, but could refuse to accept a container that showed evidence of leakage of human remains or posed other health and safety risks to crematory workers.

The bill would not allow the simultaneous cremation of two or more bodies, unless otherwise authorized in writing. Human remains would not be allowed to commingle with other remains at any time from cremation to final disposition. Cremated remains could be placed only in a crypt, niche, or grave, or scattered on private property or over other approved areas. It would be the responsibility of the authorized agent to dispose of the cremated remains. Failure to claim the remains within 120 days after cremation would allow the crematory establishment to dispose of them.

Licensing and training. Any operator or owner of a crematory that was not registered with the FSC on September 1, 2003, would be required to obtain a crematory establishment license from the FSC. The applicant would have to demonstrate that the owner or operator of the crematory was properly trained and certified by a reputable organization such as the Cremation Association of North America (CANA). The license application also would collect information about the principals in the crematory establishment, including any criminal convictions, involvement in civil actions involving fraud allegations, or past license suspensions in Texas or elsewhere. All crematory owners and operators would be required to renew their licenses annually.

CSHB 587 would require the FSC to develop a crematory application form for licensing and renewal, adopt rules, establish procedures and qualifications for crematory establishment licenses, and determine the organizations who were approved to train and certify owners or operators of crematories by November 1, 2003.

Penalties. The cremation of human remains without a signed cremation authorization form, or the signing of such a form with actual knowledge that the form contained false or incorrect information, would be a class B misdemeanor (up to 180 days in jail and/or a maximum fine of \$2,000). It also would be a class B misdemeanor for a person without a crematory license to represent to the public that the person may cremate human remains.

CSHB 587 would authorize the FSC to seek an injunction against a crematory that violated this chapter or FSC rules.

If a dispute were to arise regarding the cremation, acceptance, release, or disposition of the remains, a crematory, funeral establishment, or cemetery could refuse to act, without incurring civil or criminal liability for refusing to release or dispose of cremated remains, until authorized by a court order.

A crematory also would not be liable for the loss of any valuables so long as it exercised reasonable care in protecting those valuables. A crematory, funeral establishment, funeral director, cemetery, or other person would not be civilly liable for the acts of employees that were outside of the scope of the employees' authority or responsibility. An agent or funeral establishment that delivered human remains to a crematory without disclosing the existence of a pacemaker or other potentially hazardous device would be liable for any damages resulting from cremation of the items.

CSHB 587 would repeal Section 711.006 of the Health and Safety Code, which pertains to limitations on crematory construction and operation. This repeal would apply only to causes of action that accrued after January 1, 2004.

This Act would take effect on September 1, 2003, except that the repeal of Section 711.006 of the Health and Safety Code would take effect on January 1, 2004.

**SUPPORTERS
SAY:**

Cremation is an increasingly popular method of laying human remains to rest, but due to a few horrible incidents committed by rogue crematory operators in recent years, it is necessary to establish firm laws that will govern cremations. This area needs comprehensive reform to properly preserve the dignity and respect of our loved ones and to prevent what happened in Noble, Georgia from happening in Texas.

CSHB 587 would provide strict guidelines for crematory services based on the CANA model code. By establishing these standards, Texas would be at the forefront of national crematory laws.

By requiring that a crematorium not registered with the FSC on September 1, 2003, be adjacent to a cemetery or funeral home, the bill would allow greater

public scrutiny of crematories, greatly increasing the chance for exposure of any wrong doing. Crematories currently must reside on dedicated cemetery property, which could be a place where no burials occur. This bill would not allow crematories to operate in the sort of seclusion that allowed the contemptible events in Georgia to happen.

CSHB 587 also would protect crematory workers and the deceased by setting standards of training for crematory operators. Although some crematories follow CANA guidelines, there is no enforcement of these guidelines on the state level. This bill would require the state to set and enforce training guidelines to ensure the health and safety of workers, and those that came into contact with human remains, as well as to protect the dignity of and respect for the deceased.

An additional safeguard in CSHB 587 would be the required tracking of remains. Because there is no current requirement to record the final destination of human remains, most crematories and funeral establishments do not record this information. Requiring the tracking of remains would ensure that family members could locate the remains of loved ones many years after cremation.

A common problem in the cremation business is the prevention of damage to crematories from hidden items, such as pacemakers and other hazardous materials, that can damage crematories severely if they remain in the body when it is cremated. This bill would help reduce damage to crematories and possible harm to operators by providing a criminal penalty against an authorized agent or funeral director who knew that a pacemaker or similar item was in a decedent's body but did not notify the crematory.

CSHB 587 would require the proper labeling of containers of crematory remains, the need for which is exemplified by the recent theft of remains from a van transporting them to the authorized agent. There is no indication that the stolen remains were labeled, and one can assume that the thieves would have left behind properly labeled remains in favor of items that had resale value. In addition, proper labeling would ensure safe handling and safe arrival of remains at their destination.

To cite again the case of the recent theft of remains from a van, the bill would not hold the crematory company liable for the loss of remains if the company had exercised reasonable care to protect and secure the remains and had followed the other provisions of the bill, such as proper labeling.

The limitations of liability that this bill would provide for crematories, funeral establishments, and their employees is necessary. They apply only when reasonable care is exercised in following the instructions of authorized agents. This liability provision mirrors the language of sec. 711.002(I) of the Health and Safety Code, which provides that a worker shall not be liable for carrying out the written instructions of an agent.

Although CSHB 587 does not explicitly state that the FSC would have to deny licenses to certain types of criminals, it would allow the FSC to set rules and qualifications for obtaining crematory licenses, thereby giving the FSC the authority to deny licenses to those that it believed should not receive them.

The word “casket” has been included in the definition of cremation container to emphasize the fact that a casket is not required for cremation.

**OPPONENTS
SAY:**

By limiting the liability of crematories and funeral establishments, this bill would make it excessively difficult for families to recover losses if something terrible should happen to the remains of their loved ones. The recent theft of human remains from a van poses a good question. If such a theft occurred after the enactment of this bill, could the family of the person whose remains were stolen bring any sort of civil action against the cremation company for not properly protecting the remains? If the company had transported the remains pursuant to a valid authorization form and the box of remains had been labeled properly, the answer likely would be “no.” The bereaved family would have few options but to seek criminal or civil penalties against the thieves, if they ever were caught.

Although the bill would enhance licensing requirements for crematory establishments, it would not provide adequate protections against criminals being issued these licenses. The application would collect background information on the principals of the business, including any involvements in defending civil actions with allegations of fraud, any license suspensions, and

any criminal history. However, it would fail to address possible criminal histories of other workers at the crematorium.

Current law allows the FSC to refuse to issue a license to individuals who have been convicted of a felony or of a misdemeanor related to a business that the FSC regulates, such as embalming. But this does not cover businesses that are related to funeral services not regulated by the FSC, such as monument companies. For example, a person who committed a crime by destroying gravestones in cemeteries but who pled this crime down to a misdemeanor still could be granted a crematory operator's license under this bill. It does not make sense to allow a person with such a history of criminal acts to become a crematory operator. This bill should contain specific language directing the FSC to deny licenses to people that are likely to damage or dishonor the remains of our loved ones.

Placing the word "casket" in the definition of cremation container would create a likelihood of confusion amongst the public that a casket would be required for cremation. Therefore, the word "casket" should be removed from the definition.

NOTES:

The committee substitute differs from the bill as introduced in the following ways:

- CSHB 587 would remove the FSC's authority to establish by rule minimum standards related to sanitation and fire protection equipment.
- CSHB 587 would replace the word "adjoin" with the phrase "adjacent to" when describing the proximity that a crematory not registered with the FSC on September 1, 2003, must have to a perpetual cemetery or funeral establishment.
- CSHB 587 would specify the requirements of the cremation authorization form and the relationship between the authorizing agent, deceased, and funeral and crematory establishments.
- CSHB 587 would remove the requirement that the cause of death be included on the form and change the requirement of a written affidavit to a sworn statement not required to be made in front of a notary. The

substitute also would require that an agent state if another person had an equal priority right to authorize cremation, rather than a superior or equal right.

- CSHB 587 would put the burden of liability solely on the authorizing agent for any liability arising from performing the cremation without the authorization of any person with an equal priority right or if the agent made false or misleading representations to the funeral or crematory establishment.
- CSHB 587 would change the time limit during which a crematory may dispose of unclaimed cremated human remains from 60 days to no earlier than the 121st day after cremation.
- CSHB 587 would require that an authorizing agent who knew of the existence of a pacemaker or other potentially hazardous implant in a deceased body notify both the funeral director and the crematory establishment, rather than just notifying one or the other.
- CSHB 587 would preclude crematory establishments from both civil and criminal liability, rather than just from civil liability, for any damages to valuables if those establishments exercised reasonable care. It would also preclude civil and criminal liability, rather than just civil, against a crematory, funeral establishment, cemetery, or other person in the event of a dispute concerning a cremation or disposition of cremated remains.
- CSHB 587 would remove the provision that an owner or operator of a crematory licensed under Subchapter N, Occupations Code, would be responsible for the conduct of the business of the crematory under Chapter 716, Health and Safety Code, thereby making shielding a corporation's owners from personal liability.

The companion bill, SB 306 by Carona, was reported favorably, as substituted, by the Senate Government Organization Committee on April 8 and recommended for the Local and Uncontested Calendar.

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HB 1538 by Chisum and SB 278 by Shapleigh are the Sunset bills for the FSC. HB 1538 was heard in the House Public Health Committee on April 9, 2003 and SB 278 has been referred to the Senate Government Organization Committee.