

- SUBJECT:** Regulation and operation of funeral homes, cemeteries, and crematories
- COMMITTEE:** Public Health — favorable, without amendment
- VOTE:** 8 ayes — Kolkhorst, Naishtat, Coleman, J. Davis, Gonzales, Laubenberg, McReynolds, Zerwas
- 0 nays
1 present not voting — Truitt
- 2 absent — Hopson, S. King
- WITNESSES:** For — Jim Bates, Funeral Consumers Alliance of Texas; Paul Beaty, Texas Funeral Director Association; William Piet; Bill Vallie, Texas Funeral Directors Association; (*Registered, but did not testify:* Russell Allen, Arlie Davenport; Claud Estes, Texas Cemetery Association; Wes Killian; Steve Martin, Texas Funeral Directors Association; David Massey, Woodlawn Funeral Home and Cemetery; Rodney Molitor; George Rouse; Frank Seddio; Michael Wilfong)
- Against — None
- On — Chet Robbins, Texas Funeral Service Commission
- BACKGROUND:** The Texas Department of Banking regulates perpetual care cemeteries. Perpetual care cemeteries are cemeteries for which maintenance and repair are paid for by a special fund established for that purpose.
- The Texas Funeral Service Commission regulates funeral directors, embalmers, funeral and commercial embalming establishments, and cemetery organizations that do not operate perpetual care cemeteries.
- Health and Safety Code, ch. 711, which regulates cemeteries and crematoriums, outlines who may be an authorizing agent to determine the manner in which a deceased person's remains may be disposed.
- DIGEST:** HB 1468 would revise laws on the regulation and operation of funeral homes, cemeteries, and crematories.

Burial plots. A cemetery organization could not resell the right to a burial plot unless the organization had first reacquired the right to the burial plot. The Texas Funeral Service Commission or Texas Department of Banking, as appropriate, could impose a sanction or other penalty for violating this requirement if the cemetery did not correct the violation within 90 days of receiving notice of the violation from the agency. A cemetery organization could not make more than one interment in a burial plot without each owner's consent.

Cremation. A cremation authorization form would not be required to cremate human remains if the deceased person had left written directions to cremate his remains and the deceased person's authorizing agent refused to sign a cremation authorization form. In such an instance, the crematory could cremate the remains if cremation costs were paid and the authorizing agent affirmed in writing the identity of the deceased person. The crematory could release the remains according to the deceased person's written directions.

Individuals and entities authorized to cremate human remains could not be held criminally or civilly liable for cremating the remains of a person whose authorizing agent refused to sign a cremation authorization. It would not be a violation for a person to carry out funeral arrangements as directed by a person who represented himself as the deceased's authorizing agent and presented an authorized agent's form.

A crematory would have to place an item that identified the deceased person in the container holding the cremated remains.

HB 1468 would require the crematory, rather than the person scattering the cremated remains, to pulverize any cremated bone fragments to a particle size of one-eighth of an inch or less, as necessary.

A crematory could accept human remains for refrigeration before it received authorization to cremate the remains.

Regulatory authority. Subpoenas issued by the Funeral Service Commission would have to comply with state and federal law as well as standards established by the commission enabling the executive director to issue subpoenas in connection with a complaint investigation.

The commission or an administrative law judge from the State Office of Administrative Hearings could impose a disciplinary action that was more severe for a repeat violation of a law or commission rule.

Funeral director's and embalmer's licenses. The bill would permit a person whose funeral director's or embalmer's license had been expired for one year or more or a person whose license had been revoked to renew or receive a reissued license by:

- retaking and passing the licensing exam;
- paying fees, including a fee that was twice the normal renewal fee; and
- completing the continuing education requirements.

A person whose license had been revoked also would have to meet other requirements determined by the Funeral Service Commission and could not apply for license reissuance within three years of license revocation.

A suspended license could be renewed by paying a renewal fee equal to twice the normal renewal fee in addition to any other penalties assessed by the commission.

HB 1468 would remove the existing statutory reporting requirements for provisional license holders and require the commission to establish the reporting requirements for provisional license holders by rule.

Crematory licenses. The Funeral Service Commission could set a crematory's license fee, renewal fee, and late renewal penalty. A crematory would not have to apply for a new license if the crematory establishment license had been expired for more than 30 days but instead would be required to cease operations until the renewal fee and late payment penalty were paid.

Casket display. Of the five adult caskets that a funeral establishment must display, the three caskets not required to be displayed in full-size could be displayed as a partial panel or by video, brochure, online, or in any other manner.

Perpetual care cemeteries. The Funeral Service Commission annually would register the list of perpetual care cemeteries provided by the Texas Department of Banking. Perpetual care cemeteries would not be required

to pay a registration or renewal fee to the commission. The bill would remove other references to perpetual care cemeteries in statutes pertaining to regulation by the Texas Funeral Service Commission.

Effective date. The bill would take effect September 1, 2009. Changes to the requirements for license renewal and reissuance would apply only to licenses that expired, were suspended, or were revoked on or after the effective date.

**SUPPORTERS
SAY:**

HB 1468 would make a variety of beneficial revisions to the regulation and practices of funeral homes, cemeteries, and crematories. The bill would revise licensing renewal provisions so that a person whose embalmer's or funeral director's license had been revoked would have to wait longer to reapply for a license and the reissuance process could be more stringent than the process for renewal of an expired license.

The bill would better fulfill the deceased person's wishes by clarifying that the deceased's decision about how the deceased's remains should be disposed, including cremation, could be carried out even if the deceased's authorized agent refused to sign the cremation authorization form. The bill would make other parts of the cremation process run more smoothly by allowing crematories to accept human remains for storage before receiving cremation authorization so that crematories did not have to pay for secondary, off-site storage for these remains.

The bill would regulate the resale of burial plots so that consumers were protected from cemetery operators selling the right to a burial plot to more than one person.

HB 1468 would remove references to perpetual care cemeteries under provisions regulated by the Funeral Service Commission to clarify that perpetual care cemeteries are regulated by the Department of Banking.

**OPPONENTS
SAY:**

HB 1468 could be improved to ensure that a deceased person's wish to be cremated could be followed in every circumstance. As the bill is written, remains could be cremated only if an authorized agent identified them. In many cases, a person has not designated an authorized agent nor are there living relatives who would qualify as authorized agents, yet other individuals could identify the remains. The bill should allow another person to identify a deceased person's remains if no authorized agent was available to do so. Then crematoriums could follow the deceased's wishes

to be cremated without fear of legal ramifications for doing so without consent of an authorized agent.