

BILL ANALYSIS

Senate Research Center

H.B. 3516
By: Marchant (Carona)
Administration
5/14/1999
Engrossed (REVISED)

DIGEST

Recently, the commissioners of the Texas Funeral Service Commission, which has regulated the funeral industry since 1932, voted unanimously to discharge the executive director. This bill would amend Article 4582b, V.T.C.S., to revise regulations of funeral directing and embalming.

PURPOSE

As proposed, H.B. 3516 revises regulations of funeral directing and embalming.

RULEMAKING AUTHORITY

Rulemaking authority is granted to the Texas Funeral Service Commission in SECTION 11 (Section 2L, Article 4582b, V.T.C.S.) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 1C, Article 4582b, V.T.C.S., to authorize a dead human body to be transferred without a licensed funeral director (director) personally making the transfer to and from an airport or a crematory, rather than without a director making the transfer. Deletes text authorizing a dead human body to be picked up without the supervision of a director. Makes conforming and nonsubstantive changes.

SECTION 2. Amends Section 2A(1), Article 4582b, V.T.C.S., to provide that the Texas Funeral Service Commission (commission) consists of six commissioners, rather than nine, two of which are required to hold a license as both an embalmer and a director and four of which are required to be representatives of the general public, rather than four being required to be licensed embalmers and directors and three being required to be embalmers.

SECTION 3. Amends Section 2A(2), Article 4582b, V.T.C.S., to respecify terms of office for the commissioners of the commission (commissioner).

SECTION 4. Amends Section 2A(5), Article 4582b, V.T.C.S., to require one commissioner that is authorized to attend an informal conference relating to a case under Section 6C of this Act to hold both a license as a director and an embalmer. Prohibits a commissioner who has a personal or private interest, or is employed by an entity with a personal or private interest, in a measure, proposal, or decision pending before the commission from voting or participating in an informal conference relating to that interest as provided by Section 572.058, Government Code.

SECTION 5. Amends Section 2A(6), Article 4582b, V.T.C.S., to provide that a violation of this subdivision's prohibition against certain corporate officers or employees serving on the commission which occurs after a member is appointed constitutes a vacancy of each of those member's positions, as of the date of the completion of the merger or other agreement. Requires the governor to fill a vacancy as soon as possible, and provides that the appointed member serves for the remainder of the vacated term.

SECTION 6. Amends Section 2A(7), Article 4582b, V.T.C.S., to delete text prohibiting a person from acting as the general counsel to the commission.

SECTION 7. Amends Section 2D, Article 4582b, V.T.C.S., to require the governor to designate a public member of the commission, rather than one commissioner, as the presiding officer, rather than chairman. Requires the commission to elect a public member, rather than vice chairman and secretary from the

commission, to serve as assistant presiding officer until a successor is elected. Makes conforming and nonsubstantive changes.

SECTION 8. Amends Section 2E, Article 4582b, V.T.C.S., to require the commission to annually file with the governor a report on the commission's compliance with Subsections P and Q of this section.

SECTION 9. Amends Section 2H, Article 4582b, V.T.C.S., to require the commission to employ and supervise an executive director to manage the administrative affairs of the commission. Requires the commission to determine the terms and conditions of the employment of the executive director and to set the salary of the executive director. Authorizes the commission to delegate the commissioner's duties to the executive director. Requires the attorney general to designate at least one employee to advise and represent the commission. Prohibits the commission from employing legal counsel except as provided by Section 402.0212, Government Code. Deletes text authorizing the commission to employ legal counsel other than the attorney general. Makes a nonsubstantive change.

SECTION 10. Amends Section 2K, Article 4582b, V.T.C.S., to require meetings of the committees of the commissioners, rather than of the commission, to be open and public. Provides that a member of the public is not required to provide notice to the commission before appearing and speaking before the commission.

SECTION 11. Amends Section 2L, Article 4582b, V.T.C.S., to require the commission, by rule, to establish standards that enable the executive director to issue subpoenas and subpoenas duces tecum. Deletes text authorizing the commission to delegate to the executive director the power to issue subpoenas.

SECTION 12. Amends Section 2O, Article 4582b, V.T.C.S., to subject the commission to Chapter 551, Government Code, and Chapter 2001, Government Code, rather than Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, V.T.C.S., and Article 6252-13a, V.T.C.S.). Provides that the commission's duties under Chapter 551, Government Code, include the requirement under Sections 551.021 and 551.022 to prepare and maintain the minutes of each open meeting.

SECTION 13. Amends Section 2, Article 4582b, V.T.C.S., by adding Subsection V, to require a request for an opinion under Chapter 402C, Government Code, to be approved by a majority of the commissioners.

SECTION 14. Amends Section 2T, Article 4582b, V.T.C.S., to delete text requiring the commission to be represented by a counsel designated and authorized by the commission.

SECTION 15. Amends Section 2A(d), Article 4582b, V.T.C.S., to require the programs under Subsections (a) and (b) and a policy statement prepared under Subsection (c) of this section to cover an annual period.

SECTION 16. Amends Section 3F, Article 4582b, V.T.C.S., to require, rather than authorize, the commission to waive a license requirement for an applicant that meets the requirements under this subsection and who has a license, rather than a valid license, from another state having similar licensing requirements, and authorizes the commission to waive any license requirement for an applicant that has a license from a state that does not have similar licensing requirements. Requires the commission to conduct a criminal background check on each applicant. Provides that an applicant is not eligible for a reciprocal license if the applicant has, in the 10 years preceding the date of the application, been finally convicted of a misdemeanor involving moral turpitude or a felony. Requires an applicant to provide certain proofs and pass a written examination regarding applicable state laws and commission rules, which the commission is required to administer at each regularly scheduled meeting of the commission.

SECTION 17. Amends Section 3H, Article 4582b, V.T.C.S., to authorize the commission to assess an administrative penalty before, rather than without, a waiver of a right to a hearing. Authorizes the commission to refuse to permit a person to serve as a provisional licensee if the person has been found to have violated this Act. Provides that a violation of this Act includes a violation of Chapter 154, Finance Code, or a rule adopted under that Act, rather than Section 1, 5, or 9, Chapter 512, Acts of the 54th Legislature, Regular Session, 1955 (Article 548b V.T.C.S.). Deletes arguments expressed or implied by Section 6G(d) of this Act from the specified lists of violations that constitute a violation of this Act. Makes conforming changes.

SECTION 18. Amends Section 3I, Article 4582b, V.T.C.S., to authorize the commission to issue such rules and regulations as may be necessary, rather than necessary or desirable, to effect the intent of the provisions of this section.

SECTION 19. Amends Section 4, Article 4582b, V.T.C.S., to authorize the commission to refuse to issue an establishment license to an individual, partnership, or corporation that has violated Chapter 154, Finance Code, rather than Chapter 512, Article 548b, V.T.C.S. Provides that an establishment which functions solely as a commercial embalmer shall not be required to meet the requirements of Paragraphs (A), rather than Subsection 1, and (E), rather than 5, of Subdivision 1 of this Subsection C, rather than paragraph C. Requires an embalming serve to comply with Act or a rule adopted under this Act. Authorizes the commission to exempt a funeral establishment from the requirements of Subsection C.1(D)(1) under certain conditions. Authorizes a funeral establishment alleged to have violated this section to waive the right to a hearing as provided by Section 6C of this Act. Requires the Texas Department of Insurance, rather than the State Board of Insurance, to adopt a joint memorandum of understanding relating to prepaid funeral services and transactions. Makes conforming changes.

SECTION 20. Amends Section 5B, Article 4582b, V.T.C.S., to provide that all rules adopted by the commission are subject to the Administrative Procedure Act, Chapter 2001, Government Code, rather than the Administrative Procedure and Texas Register Act, Article 6252-13a, V.T.C.S.

SECTION 21. Amends Section 6C, Article 4582b, V.T.C.S., as follows:

Sec. 6C. New heading: APPLICATION OF ADMINISTRATIVE PROCEDURE ACT. Provides that a proceeding conducted by the commission relating to a reprimand other than an administrative penalty is governed by the Chapter 2001, Government Code. Requires a proceeding brought under Subsection (b) of the section to be held before an administrative law judge employed by the State Office of Administrative Hearings, rather than a hearings officer. Authorizes a funeral establishment alleged to have violated this Act or a rule adopted under this Act to waive the right to a hearing as provided by this section by written notification to the commission. Deletes text requiring the executive director to set a time and place for hearing. Makes conforming changes.

SECTION 22. Amends Section 6D, Article 4582b, V.T.C.S., to provide that an information file is public information, except for information relating to a complaint that has not reached a final disposition, rather than except for information in the file obtained by the commission after investigating the complaint. Deletes a provision providing that the information obtained after investigating the complaint is not public information. Deletes text requiring the commission to contract for the services of persons to investigate complaints. Deletes provisions regarding eligibility to serve as an investigator.

SECTION 23. Amends Section 6F, Article 4582b, V.T.C.S., to make conforming changes.

SECTION 24. Amends Sections 6G(c) and (e), Article 4582b, V.T.C.S., to authorize the amount of an administrative penalty assessed to a person or establishment to only be disclosed to that entity, unless that entity has waived the right to a hearing or paid the amount to the commission, until a hearing has been held on the possible violation. Revises procedures for the payment of an administrative penalty assessed after a hearing conducted under Section 6C of this Act, by the use of paying the penalty, filing a bond, or filing an affidavit.

SECTION 25. Amends Section 6H, Article 4582b, V.T.C.S., to authorize the commission to issue a letter of reprimand without a hearing if the person or establishment waives a hearing, rather than as provided by this section. Deletes a provision authorizing the commission to issue a preliminary report that states the facts on which a conclusion is based and a reprimand is to be issued. Deletes a provision setting forth procedures for a person to request a hearing after the issuance of a preliminary report.

SECTION 26. Amends Section 6I, Article 4582b, V.T.C.S., to make conforming changes.

SECTION 27. Amends Section 2C, Article 4582b, V.T.C.S., to require the commission to meet at least in regular session at least once each calendar quarter, rather than two times each year. Makes conforming and nonsubstantive changes.

SECTION 28. Effective date; September 1, 1999.
Makes application of this Act prospective.

SECTION 29. Sets forth procedures for replacing members of the commission serving on the effective date of this Act and requiring members to be appointed by the governor.

SECTION 30. Emergency clause.