

## **BILL ANALYSIS**

Senate Research Center

H.B. 3067  
By: Chisum (Zaffirini)  
State Affairs  
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Engrossed

### **DIGEST AND PURPOSE**

The legislature created the State Board of Embalming in 1903 to license and regulate embalmers. In 1987, the legislature changed the board's name to the Texas Funeral Service Commission (commission) and expanded its authority. Currently, the commission licenses both funeral directors and embalmers, and enforces violations of the commission's statute. The commission is subject to the Texas Sunset Act and will be abolished on September 1, 2001 unless continued by the legislature. As a result of its review of the commission, the Sunset Advisory Commission recommended a two-year continuation and several other statutory modifications. C.S.H.B. 3067 continues the commission and incorporates recommendations of the Sunset Advisory Commission.

### **RULEMAKING AUTHORITY**

Rulemaking authority is expressly granted to the Texas Funeral Service Commission in SECTION 1.11 (Section 651.157, Occupations Code), SECTION 1.12 (Section 651.202, Occupations Code), SECTION 1.16 (Section 651.164, Occupations Code), SECTION 1.25 (Section 651.5515, Occupations Code), of this bill.

### **SECTION BY SECTION ANALYSIS**

#### ARTICLE 1. TEXAS FUNERAL SERVICE COMMISSION AMENDMENTS

SECTION 1.01. Amends Section 101.002, Occupations Code, to provide that the Health Professions Council (council) consists of 15 (rather than 14) members, with one member appointed by the Texas Funeral Service Commission (commission). Makes nonsubstantive changes.

SECTION 1.02. Amends Chapter 101B, Occupations Code, by adding Section 101.0515, as follows:

Sec. 101.0515. APPLICABILITY OF SUBCHAPTER. Provides that this subchapter does not apply to the commission.

SECTION 1.03. Amends Section 651.001, Occupations Code, to define "cemetery" and "crematory," and to redefine "funeral directing." Makes nonsubstantive changes.

SECTION 1.04. Amends Section 651.002, Occupations Code, to provide that the Texas Funeral Service Commission is subject to Chapter 325, Government Code (Texas Sunset Act) and that, unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2003.

SECTION 1.05. Amends Section 651.051(a), Occupations Code, to provide that the commission consists of seven (rather than six) members appointed by the governor, with the advice and consent of the senate, with three, rather than two, members who are licensed as both an embalmer and a funeral director for at least the five years preceding appointment to the commission.

SECTION 1.06. Amends Chapter 651B, Occupations Code, by adding Sections 651.0511 and 651.0512, as follows:

Sec. 651.0511. TRAINING. Prohibits a person who is appointed to and qualifies for office as a member of the commission from voting, deliberating, or being counted as a member in attendance at a meeting of the commission until the person completes a training program that complies with this section. Sets forth requirements for the training program. Provides that a person appointed to the commission is entitled to reimbursement, as provided by the General Appropriations Act, for the travel expenses incurred in attending the training program regardless of whether the attendance at the program occurs before or after the person qualifies for office.

Sec. 651.0512. TRAINING FOR EMPLOYEES ON STATE INCENTIVE PROGRAM. Requires the executive director or the executive director's designee to provide to commission employees information and training on the benefits and methods of participation in the state employee incentive program under Chapter 2108B, Government Code.

SECTION 1.07. Amends Section 651.052, Occupations Code, to prohibit a person from being (rather than providing that a person is not eligible for appointment as) a public member of the commission under certain conditions.

SECTION 1.08. Amends Section 651.053, Occupations Code, as follows:

Sec. 651.053. (a) Redefines "Texas trade association" by deleting the term "nonprofit."

(b) Deletes existing Subsection (b). Prohibits a person may from being a member of the commission and from being a commission employee employed in a "bona fide executive, administrative, or professional capacity," as that phrase is used for purposes of establishing an exemption to the overtime provisions of the federal Fair Labor Standards Act of 1938 (29 U.S.C. Section 201 et seq.), and its subsequent amendments, under certain conditions.

(c) Deletes existing Subsection (c). Prohibits a person from being, rather than serving as, a member of the commission or acting as the general counsel if the person is required to register as a lobbyist under Chapter 305, Government Code, because of the person's activities for compensation on behalf of a profession related to the operation of the commission.

Deletes existing Subsections (d) - (g).

SECTION 1.09. Amends Section 651.104, Occupations Code, to require the commission to develop and implement policies that clearly separate (rather than define) the policy-making responsibilities of the commission and the management responsibilities of the executive director and staff of the commission.

SECTION 1.10. Amends Section 651.107, Occupations Code, to require the executive director or the executive director's designee to prepare and maintain a written policy statement that implements a program of equal employment opportunity to ensure that all personnel decisions are made without regard to race, color, disability, sex, religion, age, or national origin. Sets forth requirements for the policy. Deletes existing Subsection (c).

SECTION 1.11. Amends Section 651.157, Occupations Code, to require a licensed funeral establishment, except as otherwise provided by this section, to be inspected at least once every two years (rather than annually) by an agent of the commission or by an agent of the state or a political subdivision authorized by the commission to make inspections on its behalf. Requires the commission, if it finds a violation of this chapter or of Chapter 193 or 361, Health and Safety Code, to inspect the

establishment annually until the commission determines that the establishment is free of violations. Makes conforming and nonsubstantive changes. Requires the commission by rule to establish certain procedures and criteria.

SECTION 1.12. Amends Section 651.202, Occupations Code, to require the commission to adopt rules concerning a complaint filed under this section. Sets forth requirements for the rules adopted under this subsection. Requires the commission to investigate each complaint received by the commission relating to a funeral director, embalmer, provisional license holder, funeral establishment, or other person licensed under this chapter. Requires the commission to provide to the person filing the complaint and to each person who is a subject of the complaint a copy of the commission's policies and procedures relating to complaint investigation and resolution, including an explanation of the remedies that are available to the person under this chapter and information about other appropriate state or local agencies or officials with which the person may file a complaint. Deletes text regarding a written complaint. Makes conforming and nonsubstantive changes. Deletes existing Subsection (c).

SECTION 1.13. Amends Section 651.203(a), Occupations Code, to require the commission to maintain a file (rather than keep information) on each written (rather than about each) complaint filed with the commission. Deletes text regarding the commission's authority. Sets forth requirements for the file.

SECTION 1.14. Amends Section 651.254, Occupations Code, to require the commission, not later than the 30th day after the date a person takes a licensing examination (rather than on which a funeral director's or embalmer's licensing examination is administered) under this chapter, to notify the person (rather than each examinee) of the results of the examination. Deletes text regarding a national testing service. Makes conforming and nonsubstantive changes. Authorizes the commission to require a testing service to notify a person of the results of the person's examination. Deletes existing Subsection (e).

SECTION 1.15. Amends Chapter 651F, Occupations Code, by adding Section 651.2595, as follows:

Sec. 651.2595. PROVISIONAL LICENSE FOR OUT-OF-STATE APPLICANT. (a) Authorizes the commission to issue a provisional license to an applicant currently licensed in another jurisdiction who seeks a license in this state and who meets certain requirements.

(b) Authorizes the commission to waive the requirement of Subsection (a)(3) for an applicant if the commission determines that compliance with that subsection would be a hardship to the applicant.

(c) Provides that a provisional license is valid until the date the commission approves or denies the provisional license holder's application for a license. Requires the commission to issue a license under this chapter to the provisional license holder under certain conditions.

(d) Requires the commission to approve or deny a provisional license holder's application for a license not later than the 180th day after the date the provisional license is issued. Authorizes the commission to extend the 180-day period if the results of an examination have not been received by the commission before the end of that period.

(e) Authorizes the commission to establish a fee for provisional licenses in an amount reasonable and necessary to cover the cost of issuing the license.

SECTION 1.16. Transfers Section 651.262, Occupations Code, to Chapter 651D, Occupations Code, redesignates it as Section 651.164, Occupations Code, and amends it as follows:

Sec. 651.164. Redesignated from original Section 651.262. Authorizes the commission by rule to adopt a system under which licenses expire on various dates during the year. Makes conforming changes. Deletes text requiring the commission to adjust dates for sending notice regarding payment of fees and license suspension for nonpayment according to the system, if any, adopted under this subsection. Requires the commission, for the year in which the license expiration date is changed, to prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid.

SECTION 1.17. Transfers Section 651.263, Occupations Code, to Chapter 651D, Occupations Code, redesignates it as Section 651.165, Occupations Code, and amends it as follows:

Sec. 651.165. Redesignated from original Section 651.263. Authorizes a person who is otherwise eligible to renew a license to renew an unexpired license by paying the required renewal fee to the commission before the expiration date of the license. Prohibits a person whose license has expired from engaging in activities that require a license until the license has been renewed. Sets forth guidelines regarding the renewal of a license. Prohibits certain persons from renewing a license and sets forth guidelines regarding obtaining a new license. Makes nonsubstantive changes.

SECTION 1.18. Amends Section 651.266, Occupations Code, to authorize the commission by rule to require continuing education as a condition for license renewal except for a license holder described by Section 651.155 or an applicant for renewal described by Section 651.265. Requires the commission, if it requires continuing education, to require completion of a minimum number of hours of ethics training as a required part of that education.

SECTION 1.19. Amends the heading to Section 651.405, Occupations Code, to read as follows:

Sec. 651.405. RETAIL PRICE LIST; FUNERAL ESTABLISHMENT.

SECTION 1.20. Amends Chapter 651I, Occupations Code, by adding Section 651.4055, as follows:

Sec. 651.4055. RETAIL PRICE LIST; CEMETERY OR CREMATORY. (a) Defines “retail price list.” Sets forth requirements for a retail price list.

SECTION 1.21. Amends Chapter 651I, Occupations Code, by adding Section 651.4065, as follows:

Sec. 651.4065. PURCHASE AGREEMENT; CEMETERY OR CREMATORY. Sets forth requirements for a purchase agreement. Requires an authorized person on behalf of the cemetery or crematory to sign the purchase agreement. Provides that, if the customer selects a package arrangement based on unit pricing, the itemization requirement is satisfied by providing a purchase agreement that itemizes the discount provided by the package arrangement.

SECTION 1.22. Amends Chapter 651I, Occupations Code, by adding Section 651.408, as follows:

Sec. 651.408. USE OF CEMETERY AND CREMATORY SERVICES; REGISTRATION REQUIRED. Requires the funeral director, not later than the 30th day after the date a funeral director uses a cemetery or crematory, to register the cemetery or crematory with the commission, unless the director has already registered the cemetery or crematory. Requires the commission to prescribe the form used for registration. Requires the registration information provided by the funeral director to include the name, address, and telephone number of the cemetery or crematory and the name of a contact person for the cemetery or crematory. Requires the director, if necessary because of a change in information, to update the registration information with regard to cemeteries and crematories used by the director in the previous

calendar year at least once each year.

SECTION 1.23. Amends Section 651.455, Occupations Code, as follows:

Sec. 651.455. New heading: FALSE OR MISLEADING STATEMENTS REGARDING FUNERAL MERCHANDISE OR FUNERAL, CEMETERY, OR CREMATORY SERVICES. Provides that a person violates this chapter if the person uses a statement that misleads or deceives the public, including a false or misleading statement regarding a legal, religious, or cemetery requirement for funeral merchandise or funeral, cemetery, or crematory services. Makes conforming changes. Provides that this section does not apply to cemetery or crematory services that occur after burial or inurnment.

SECTION 1.24. Amends Chapter 651K, Occupations Code, by adding Section 651.5025, as follows:

Sec. 651.5025. IMMEDIATE LICENSE REVOCATION; EFFECT OF CERTAIN FELONY CONVICTIONS. (a) Authorizes the commission to revoke the license of a license holder without a hearing under certain conditions. Requires the commission to notify the license holder if it decides to revoke the license. Authorizes the license holder to appeal the decision by submitting a written request for a hearing in accordance with this chapter and Chapter 2001, Government Code, not later than the 30th day after the date of the revocation.

SECTION 1.25. Amends Chapter 651L, Occupations Code, by adding Section 651.5515, as follows:

Sec. 651.5515. PENALTY GUIDELINES. Requires the commission by rule to adopt certain guidelines. Requires the commission, using those guidelines and the summary, to establish and maintain a chart that meets certain requirements. Requires the commission to consider using focus groups to obtain business and consumer input to match appropriate penalties to violations before proposing the rules under this section. Requires the commission to post the guidelines on the commission's Internet site.

SECTION 1.26. Amends Section 651.552, Occupations Code, to require the commission, in determining the amount of the penalty, to base its decisions on certain factors.

SECTION 1.27. Amends Section 651.451, Occupations Code, to provide that a person violates this chapter if the person accepts compensation, directly or indirectly, for the sale of prepaid funeral services if the contract for those services does not provide for a reasonable consumer modification of funeral benefits at the time of need without penalty. Prohibits the cost of a reasonable consumer modification from exceeding one percent of the price the consumer paid for the funeral services. Makes nonsubstantive changes.

SECTION 1.28. Amends Section 651.553(b), Occupations Code, to require the commission, not later than the 10th day after the date the report is issued, to send to the person charged with the violation an explanation for any significant deviation from the penalty amount assessed for similar violations.

## ARTICLE 2. INFORMATION AND LEGAL RESOURCES

SECTION 2.01. DEFINITIONS. Defines “funeral commission” and “task force.”

SECTION 2.02. INFORMATION RESOURCES. (a) Requires the Department of Information Resources to assist the funeral commission in negotiating a contract for software and technical support to improve the compilation of statistics and other information using information resources. Provides that the Department of Information Resources is not responsible for implementing or providing the technical

support to the funeral commission regarding the software.

(b) Requires the statistics and other information compiled under Subsection (a) of this section to include certain items.

SECTION 2.03. LEGAL RESOURCES. Requires the commission to contract with the attorney general to ensure adequate access to certain legal services from the attorney general.

SECTION 2.04. PLAN. Requires the commission, not later than December 1, 2001, to develop a plan that details the manner in which it will implement the requirements of Sections 2.02 and 2.03 of this article. Sets forth requirements for the plan.

SECTION 2.05. STATUS REPORTS. Requires the commission to report once each quarter on the status of its efforts under Sections 2.02, 2.03, and 2.04 of this article to the Sunset Advisory Commission; and the task force.

SECTION 2.06. TASK FORCE. Provides that a task force is created to perform certain functions. Sets forth guidelines regarding the composition of the task force. Requires the task force to meet at least once a month. Provides that the task force is abolished and this section expires January 15, 2003.

SECTION 2.07. EXPIRATION. Provides that this article expires September 1, 2003.

### ARTICLE 3. REPEALER; TRANSITION; EFFECTIVE DATE

SECTION 3.01. (a) Repealers: Sections 651.305(a) and (b), 651.354, and 651.506(i), Occupations Code.

(b) Provides that Section 651.353, Occupations Code, is repealed effective September 30, 2001.

SECTION 3.02. (a) Defines “funeral commission” and “sunset commission.”

(b) Authorizes the sunset commission, in performing its duties under Section 651.002, Occupations Code, as amended by this Act, and Chapter 325, Government Code (Texas Sunset Act), to limit the scope of its review of the funeral commission.

(c) Authorizes the sunset commission, as part of the review, to determine how much progress the funeral commission has made in addressing and implementing certain solutions required by this Act.

(d) Requires the funeral commission, not later than September 1, 2002, to report to the sunset commission on the status of its progress under this Act.

(e) Requires the sunset commission, if it determines that the funeral commission has not made substantial progress, to consider whether to recommend that the legislature abolish the funeral commission and transfer its functions to the Texas Department of Licensing and Regulation.

SECTION 3.03. Requires the commission, not later than March 1, 2002, to adopt the rules required by Section 651.202(b), Occupations Code, as amended by this Act. Requires the commission, in adopting these rules, to examine, and use as a guide, the rules adopted by the Board of Nurse Examiners relating to complaint investigation, disposition, and related proceedings.

SECTION 3.04. Requires the commission, not later than March 1, 2002, to adopt the rules required by Section 651.5515, Occupations Code, as added by this Act.

SECTION 3.05. (a) Requires the commission to study the risk-based assessment methods used by the Texas Department of Health and the Texas Department of Licensing and Regulation in conducting inspections required by law.

(b) Requires the commission, based on the study conducted under Subsection (a) of this section, not later than March 1, 2002, to adopt the rules required by Section 651.157(d)(2), Occupations Code, as added by this Act.

SECTION 3.06. (a) Requires the governor, not later than November 1, 2001, to appoint the additional member of the commission required under Section 651.051(a)(1), Occupations Code, as amended by this Act.

(b) Provides that the changes in law made by this Act in the qualifications of, and the prohibitions applying to, the members of the commission do not affect the entitlement of a person serving as a member of the commission immediately before September 1, 2001, to continue to carry out the functions of the person's office for the remainder of the person's term. Provides that the changes in law apply only to a person appointed on or after September 1, 2001. Provides that this Act does not prohibit a person who is a member of the commission immediately before September 1, 2001, from being reappointed as a commission member if the person has the qualifications required for the position under Chapter 651B, Occupations Code, as amended by this Act.

SECTION 3.07. (a) Provides that, in accordance with Section 311.031(c), Government Code, which gives effect to a substantive amendment enacted by the same legislature that codifies the amended statute, the text of the following gives effect to changes made by Chapters 1201 and 1476, Acts of the 76th Legislature, Regular Session, 1999:

- (1) Section 651.002, Occupations Code, as set out in Section 1.04 of this Act;
- (2) Section 651.051(a), Occupations Code, as set out in Section 1.05 of this Act; and
- (3) Section 651.053, Occupations Code, as set out in Section 1.08 of this Act.

(b) Provides that, to the extent of any conflict, this Act prevails over another Act of the 77th Legislature, Regular Session, 2001, relating to nonsubstantive additions to and corrections in enacted codes.

SECTION 3.08. Effective date: September 1, 2001.