

BILL ANALYSIS

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DIGEST AND PURPOSE

Currently, the Texas Funeral Service Commission regulates funeral directors, embalmers, and funeral and commercial embalming establishments. The agency expires on September 1, 2001, unless the legislature continues it. As proposed, S.B. 313 continues the agency until 2003 and implements the Sunset Advisory Commission's recommendations regarding board composition; consumer information; complaint investigation; penalty guidelines; registration of cemeteries and crematories; and other issues.

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 651.1575, Occupations Code), SECTION 1.13 (Section 651.202, Occupations Code), SECTION 1.29 (Section 651.5515, Occupations Code), and SECTION 1.32 (Section 651.653, 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 add the Texas Funeral Service Commission to the Health Professions Council (council).

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 Texas Funeral Service Commission (commission).

SECTION 1.03. Amends Section 651.001, Occupations Code, to define "cemetery" and "crematory" and redefine "funeral director."

SECTION 1.04. Amends Section 651.002, Occupations Code, to provide that the commission is abolished and this chapter expires September 1, 2003, rather than 2001, unless continued in existence as provided by that chapter.

SECTION 1.05. Amends Section 651.051(a), Occupations Code, to provide that the commission consists of seven, rather than six, members with three, rather than two 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. Requires the training program to provide the person with certain information. 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 (State Employee Incentive Program), Government Code.

SECTION 1.07. Amends Section 651.052, Occupations Code, to prohibit a person from being a public member of the commission if the person or the person's spouse owns or controls, directly or indirectly, more than a 10 percent, rather than any, interest in a business entity or other organization regulated by or receiving money from the commission. Makes nonsubstantive changes.

SECTION 1.08. Amends Section 651.053, Occupations Code, to redefine "Texas trade association." Prohibits a person 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 circumstances. Prohibits a person from being 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 text regarding the prohibiting of certain individuals from being a commission member or an employee of the commission.

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

SECTION 1.10. Amends Section 651.107, Occupations Code, to require a policy statement to include certain information. Deletes text from the policy statement regarding procedures by which a determination can be made of significant underuse in the commission workforce of all persons for whom federal or state guidelines encourage a more equitable balance. Requires the policy statement to be reviewed by the state Commission on Human Rights for compliance with Subsection (b) (1). Deletes text that required the governor to deliver a biennial report to the legislature.

SECTION 1.11. Amends Section 651.157, Occupations Code, to require a licensed funeral establishment to be inspected at least once every two years, rather than annually, but requires the commission, if the commission finds a violation of this chapter or of Chapter 193 (Death Records) or 361 (Solid Waste Disposal Act), Health and Safety Code, to inspect the establishment annually until the commission determines that the establishment is free of violations. Requires a report of each inspection made under this section to be filed with the commission. Requires the commission by rule to establish criteria, including consideration of the establishment's inspection and complaint history, regarding when the commission should inspect an establishment based on the risk of a violation at an establishment. Makes nonsubstantive changes.

SECTION 1.12. Amends Chapter 651D, Occupations Code, by adding Section 651.1575, as follows:

Sec. 651.1575. INSPECTION OF CEMETERY OR CREMATORY. Authorizes the commission to inspect a cemetery or crematory only if the commission receives a complaint about that facility under Section 651.202. Requires a report of an inspection made under this

section to be filed with the commission. Requires the commission by rule to establish procedures for the inspection of a cemetery or crematory required by this section.

SECTION 1.13. Amends Section 651.202, Occupations Code, to require the commission to adopt rules concerning a complaint filed under this section. Sets forth a list of requirements for the rules adopted under this section. 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 or registered 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 certain information. Makes conforming and nonsubstantive changes.

SECTION 1.14. Amends Section 651.203(a), Occupations Code, to require the commission to maintain a file, which must include certain information, on each written complaint filed with the commission. Deletes certain information that is required to be included in the commission file. Makes nonsubstantive changes.

SECTION 1.15. Amends Section 651.254, Occupations Code, to require the commission, not later than the 30th day after the date a person, rather than a funeral director or embalmer, takes a licensing examination under this chapter, to notify the person of the results of the examination. Authorizes the commission to require a testing service to notify a person of the results of the person's examination. Changes a reference from "national testing service" to "testing service." Deletes text that requires notice of the time and place of an examination to be filed with the Texas Register at least seven days before the examination.

SECTION 1.16. Amends Chapter 651F, Occupations Code, by adding Section 651.2595, as follows:

Sec. 651.2595. PROVISIONAL LICENSE. 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. Authorizes the commission to waive the requirement of a certain subsection for an applicant if the commission determines that compliance with that subsection would be a hardship to the applicant. 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 if the holder meets certain requirements. 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. 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 1.17. Amends 651.262, Occupations Code, by transferring it to Chapter 651D, Occupations Code, redesignating it as Section 651.164, Occupations Code, and amending it, as follows:

Sec. 651.164. New heading: LICENSE OR REGISTRATION EXPIRATION. Changes reference from "license" to "license or registration." Makes conforming and nonsubstantive changes.

SECTION 1.18. Amends Section 651.263, Occupations Code, by transferring it to Chapter 651D, redesignating it as Section 651.165, Occupations Code, and amending it, as follows:

Sec. 651.165. 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. Authorizes a person whose license has been expired for more than 90 days but less than one year, rather than five years, to renew the license by paying to the commission a renewal fee that is equal to two times the normally required renewal fee, rather than one half of the total amount of the unpaid renewal fees. Prohibits a person whose license has been expired for one year or more, rather than five years or longer, from renewing the license. Authorizes the person to obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license. Authorizes a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application, to obtain a new license without reexamination. Requires the person to pay to the commission a fee that is equal to two times the normally required renewal fee for the license.

SECTION 1.19. Amends Section 651.266, Occupations Code, to require the commission, if the commission requires continuing education, to require completion of a minimum number of hours of ethics training as a required part of that education.

SECTION 1.20. Amends the heading to Section 651.405, Occupations Code, to read as follows:

Sec. 651.405. RETAIL PRICE LIST; FUNERAL ESTABLISHMENT.

SECTION 1.21. Amends Chapter 651I, Occupations Code, by adding Section 651.4055, as follows:

Sec. 651.4055. RETAIL PRICE LIST; CEMETERY OR CREMATORY. Defines “retail price list.” Requires the retail price to include certain information. Requires the retail price to include a certain printed notice.

SECTION 1.22. Amends the heading to Section 651.406, Occupations Code, to read as follows:

Sec. 651.406. PURCHASE AGREEMENT; FUNERAL ESTABLISHMENT.

SECTION 1.23. Amends Chapter 651I, Occupations code, by adding Section 651.4065, as follows:

Sec. 651.4065. PURCHASE AGREEMENT; CEMETERY OR CREMATORY. Requires a purchase agreement to state certain information. Requires the purchase statement to include a certain printed notice. Requires the registrant for 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 1.24. Amends Chapter 651I, Occupations Code, by adding Section 651.408, as follows:

Sec. 651.408. USE OF CEMETERY AND CREMATORY SERVICES. Provides that the fact that a funeral director contracts for cemetery or crematory services, including as part of a package arrangement, does not limit the director’s liability to the customer for those services.

SECTION 1.25. Amends Section 651.451, Occupation Code, to provide that a person violates this chapter if the person presents to the commission a license, certificate, registration, or diploma that was illegally or fraudulently obtained. Makes conforming and nonsubstantive changes.

SECTION 1.26. Amends Section 651.452, Occupations Code, to provide that a person violates this chapter if the person is convicted of a misdemeanor related to the practice of embalming, funeral directing, or another activity regulated under this chapter.

SECTION 1.27. 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 this section does not apply to cemetery or crematory services that occur after burial or inurement. Makes conforming changes.

SECTION 1.28. Amends Chapter 651K, Occupations Code, by adding Section 651.5025, as follows:

Sec. 651.5025. IMMEDIATE LICENSE REVOCATION; EFFECT OF CERTAIN FELONY CONVICTIONS. Authorizes the commission to revoke the license of a license holder without a hearing if the commission determines from the information presented to it that the license holder has been convicted of a felony related to the practice of embalming, funeral directing, or another activity regulated by the commission under this chapter. 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 hearing in accordance with this chapter and Chapter 2001 (Administrative Procedure), Government Code, not later than the 30th day after the date of the revocation.

SECTION 1.29. Amends Chapter 651L, Occupations Code, by adding Section 651.5515, as follows:

Sec. 651.5515. PENALTY GUIDELINES. Requires the commission by rule to adopt guidelines that define and summarize the violations that occur under this subchapter to assist the commission in maintaining consistency in determining the amount of an administrative penalty assessed under Section 651.552. Requires the commission, using those guidelines and the summary, to establish and maintain a chart that lists certain information. 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 1.30. Amends Section 651.552, Occupations Code, to require that the amount of the administrative penalty to be not less than \$100 or more than \$5,000 for each violation as determined by the commission based on certain information.

SECTION 1.31. 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.

SECTION 1.32. Amends Chapter 651, Occupations Code, by adding Subchapter N, as follows:

SUBCHAPTER N. REGISTRATION REQUIREMENTS:
CEMETERIES AND CREMATORIES

Sec. 651.651. DEFINITION. Defines "perpetual care cemetery."

Sec. 651.652. APPLICABILITY. Provides that this subchapter applies only to a cemetery or crematory that sells goods or services related to the burial or final disposition of a body. Provides that this subchapter does not apply to the maintenance of a cemetery or crematory, including maintenance of any goods or services provided under Chapter 711(General Provisions Relating to Cemeteries) or 712 (Perpetual Care Cemeteries), Health and Safety Code.

Sec. 651.653. CEMETERY OR CREMATORY REGISTRATION REQUIREMENTS. Prohibits a person from conducting a cemetery or crematory business in this state unless an individual who is the owner or operator of the cemetery or crematory registers with the commission. Authorizes a cemetery or crematory to be owned by a person who is not registered under this chapter. Requires the individual, in order to register, to apply for a registration and pay the registration fee. Requires the commission to register the individual on determining that the individual satisfies the requirements of this section. Requires the individual to explain the purpose of the cemetery or crematory business, provide the address and other contact information for the business, and identify the individual owner or operator who is registering. Requires the commission by rule to establish the fee to register under this subchapter. Requires the fee to include the cost of regulating registrants under this chapter, including discipline and investigation of complaints.

Sec. 651.654. PERPETUAL CARE CEMETERIES. Requires the Texas Department of Banking, on request by the commission, to provide the commission a list of perpetual care cemeteries, including the address and other contact information for each cemetery. Requires the commission to annually register, under this subchapter, each perpetual care cemetery on that list. Provides that a perpetual care cemetery is not required to pay a registration fee under this subchapter

Sec. 651.655. RENEWAL OF CEMETERY OR CREMATORY REGISTRATION. Requires the commission to mail written notice to a registrant of the impending expiration of the registration not later than the 30th day before the expiration date of the registration. The notice must state certain information. Provides that a registrant who fails to pay the renewal fee by the due date is subject to a late payment penalty equal to the amount charged for the renewal fee. Prohibits the registrant from renewing the registration, and prohibits the cemetery or crematory from being operated, until the owner or operator registers as provided by Section 651.653, if the registration is expired for longer than 30 days. Provides that this section does not apply to a perpetual care cemetery.

SECTION 1.33. Amends the heading to Title 3L, Occupations Code, as follows:

SUBTITLE L. CEMETERY AND CREMATORY SERVICES,
FUNERAL DIRECTING, AND EMBALMING

SECTION 1.34. Amends the heading to Chapter 651, Occupations Code, as follows:

CHAPTER 651. CEMETERY AND CREMATORY SERVICES, FUNERAL DIRECTING, AND
EMBALMING

ARTICLE 2. INFORMATION AND LEGAL RESOURCES

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

SECTION 2.02. INFORMATION RESOURCES. Requires the funeral commission to contract with the Department of Information Resources to improve the compilation of statistics and other information using information resources. Requires the contract to expire before the fiscal year that begins September 1, 2003. Requires the contract, in order to meet this goal, to require the department to analyze and implement changes to meet the technology needs of the funeral commission regarding the compilation of information necessary to effectively regulate the funeral industry. Requires the statistics and other information compiled under this section to include certain information.

SECTION 2.03. LEGAL RESOURCES. Requires the funeral commission to contract with the attorney general to ensure adequate access to legal services from the attorney general, including consultation about the daily operations of the funeral commission, including complaint, inspection, and

other enforcement procedures; and legal interpretations regarding Chapter 651, Occupations Code.

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

SECTION 2.05. STATUS REPORTS. Requires the funeral 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 review the plan developed by the funeral commission under Section 2.04 of this article, and monitor the funeral commission's implementation of the changes recommended by the plan. Provides that the task force is composed of certain six members, appointed not later than October 1, 2001. Requires the representative of the comptroller to serve as the presiding officer 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. Provides that this article expires September 1, 2003.

ARTICLE 3. REPEALER; TRANSITION; EFFECTIVE DATE

SECTION 3.01. Repealer: Sections 651.305(a) and (b) (Renewal or Reinstatement of Provisional License), 651.354 (Renewal of Funeral Establishment License), and 651.506(i) (Disciplinary Proceedings; Hearing Proceedings), Occupations Code. Provides that Section 651.353 (License Expiration), Occupations Code, is repealed effective September 30, 2001.

SECTION 3.02. Defines "funeral commission" and "sunset commission." 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. Requires the sunset commission, as part of the review, to determine how much progress the funeral commission has made in addressing and implementing solutions required by this Act, including certain enumerated solutions. 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. Requires the sunset commission, if the sunset commission 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 funeral 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. 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. Requires the commission to adopt the rules required by Section 651.157(d)(2), Occupations Code, as added by this Act, based on the study conducted under this section, not later than March 1, 2002.

SECTION 3.06. Requires the governor, not later than November 1, 2001, to appoint the additional member of the commission required under Section 651.051(a)(1), as amended by this Act. 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. 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 Chapter 1587, 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.

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.