

BILL ANALYSIS

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S.B. 623
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Statutes regulating the funeral industry have been pieced together over the years and are currently unclear and confusing.

As proposed, S.B. 623 provides for numerous technical and clarifying changes in the statutes regulating funeral directors, cemeteries, and crematories; requires a funeral director be involved in the cremation process; makes several changes to funeral licensing laws in order to make them clearer and more uniform; clarifies the Texas Funeral Service Commission's authority regarding the determination of the necessary documentation for a provisional funeral license; authorizes the written direction of the deceased for disposition of the deceased's remains to supersede the wishes of the deceased's authorized agent; makes cemetery operators liable for correcting cemetery errors; and regulates the resale of a burial plot.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Funeral Service Commission (commission) in SECTION 23 (Section 651.304, Occupations Code) of this bill.

Rulemaking authority previously granted to the commission is modified in SECTION 2 (Section 711.012, Health and Safety Code), of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 711.004, Health and Safety Code, by adding Subsection (m), to provide that the cemetery organization (cemetery) is responsible for all costs involved in removing and reintering the remains if such action is made to correct an error by the cemetery.

SECTION 2. Amends Section 711.012(b), Health and Safety Code, to authorize the Texas Funeral Service Commission (commission) to adopt rules to enforce and administer Section 711.0395 (Multiple Interments in Same Plot), in addition to other related sections.

SECTION 3. Amends Section 711.038, Health and Safety Code, by adding Subsection (f), as follows

(f) Prohibits a cemetery from reselling the exclusive right of sepulture in a plot unless it has been reacquired by the cemetery. Prohibits the imposition of a sanction or other penalty on a cemetery that violates this subsection unless written notice of the violation is sent to the cemetery by the state agency authorized to enforce this section and the cemetery fails to correct the violation within 91 days of receiving the notice.

SECTION 4. Amends Subchapter C, Chapter 711, Health and Safety Code, by adding Section 711.0395, as follows:

Sec. 711.0395. MULTIPLE INTERMENTS IN SAME PLOT. Prohibits a cemetery from making more than one interment in a plot unless it receives consent from each owner of the plot.

SECTION 5. Amends Subchapter A, Chapter 716, Health and Safety Code, by adding Section 716.0035, as follows:

Sec. 716.0035. ACCEPTANCE OF REMAINS. Authorizes a crematory establishment (crematory) to accept deceased human remains for refrigeration before receiving authorization to cremate the remains under Subchapter B (Authorization Requirements).

SECTION 6. Amends Section 716.051, Health and Safety Code, to provide that Section 716.054 is an exception to this section. Provides that the form a crematory requires before it can cremate deceased human remains must include a signature by a funeral director of the funeral establishment contracting out the cremation, in addition to an authorizing agent's signature.

SECTION 7. Amends Sections 716.052(a) and (c), Health and Safety Code, as follows:

(a) Requires a cremation authorization form to include the name and address of the funeral establishment that contracted out the cremation, rather than the individual funeral director's or other contracting person's address.

(c) Deletes the authorization of a funeral establishment representative, other than a funeral director, to sign the required cremation form.

SECTION 8. Amends Subchapter B, Chapter 716, Health and Safety Code, by adding Section 716.054, as follows:

Sec. 716.054. EXCEPTION; WRITTEN DIRECTIONS. (a) Sets forth the conditions under which this section applies and a cremation authorization form is not required.

(b) Authorizes a crematory to cremate a deceased person's remains without a signed cremation authorization form if the cremation costs are paid and the authorizing agent provides positive written identification that the remains are the remains of the deceased person.

(c) Requires the authorizing agent to notify the funeral director in writing of the presence of a pacemaker or other potentially hazardous implant in the remains. Provides that the director has no duty to ensure that the implant is removed before delivering the remains to a crematory and that the authorizing agent is civilly liable to the crematory for any damage resulting from the cremation of the remains containing the implant.

SECTION 9. Amends Section 716.102(a), Health and Safety Code, to make a conforming change.

SECTION 10. Amends Section 716.103, Health and Safety Code, as follows:

(a) Creates this subsection from existing text.

(b) Requires a crematory to place a permanent metal identification disc, bracelet, or other item identifying the deceased person with the cremated remains, temporary container, urn, or other permanent container.

SECTION 11. Amends Section 716.104(a), Health and Safety Code, to provide an exception to this subsection (Section 716.054).

SECTION 12. Amends Section 716.152(d), Health and Safety Code, to specifically require a crematory to pulverize any left over bone fragments from a cremation to a particle size of one-eighth of an inch or smaller.

SECTION 13. Amends Sections 716.156(a) and (b), Health and Safety Code, as follows:

(a) Provides the option for the crematory to release cremated remains according to written directions for the disposition of such remains as provided by Section 711.002(g). Makes a nonsubstantive change.

(b) Makes a conforming change.

SECTION 14. Amends Subchapter E, Chapter 716, Health and Safety Code, by adding Section 716.204, as follows:

Sec. 716.204. IMMUNITY FROM CRIMINAL AND CIVIL LIABILITY; WRITTEN DIRECTIONS. Defines "cemetery organization" and "embalmer." Provides that, if Section 716.054(a) applies, a cemetery organization, business operating a crematory or columbarium, a funeral director, an embalmer, or a funeral establishment is not civilly or criminally liable for the cremation of the remains of a deceased person or the carrying out of the written directions of the deceased person.

SECTION 15. Amends Section 716.304, Health and Safety Code, to make a conforming change.

SECTION 16. Amends Section 716.351(a), Health and Safety Code, to add the provision that a person who cremates human remains without receipt of written directions as provided by Section 711.002(g) commits an offense, unless, as already provided, the person has received a cremation authorization form signed by an authorizing agent.

SECTION 17. Amends Section 651.154(a), Occupations Code, to authorize the commission to set a crematory's license, renewal, and late renewal fees, in addition to the licensing fees for a cemetery and other funeral establishments.

SECTION 18. Amends Section 651.156, Occupations Code, by adding Subsection (d), as follows:

(d) Provides that to be effective, a subpoena or subpoena duces tecum issued under this section must be issued in compliance with state and federal law and commission rules adopted under Subsection (c).

SECTION 19. Amends Section 651.165(d), Occupations Code, to authorize a person whose funeral director's, embalmer's, cemetery, crematory, or funeral establishment license (license) has been expired for more than one year to renew the license by meeting certain requirements, rather than prohibiting such renewal. Deletes existing text authorizing a person to obtain a new license by complying with the requirements and procedures, including the examination requirements, for obtaining an original license.

SECTION 20. Amends Subchapter D, Chapter 651, Occupations Code, by adding Section 651.1655, as follows:

Sec. 651.1655. REINSTATEMENT OF SUSPENDED LICENSE. Authorizes a person whose license has been suspended to renew the license by paying the commission a renewal fee two times the normal renewal fee.

SECTION 21. Amends the heading of Section 651.267, Occupations Code, to read as follows:

Sec. 651.267. REISSUANCE OF REVOKED LICENSE

SECTION 22. Amends Sections 651.267(a) and (d), Occupations Code, as follows:

(a) Deletes existing text authorizing the commission to reissue a license to a person whose license has been suspended. Raises the time limit before an application for the re-issuance of a revoked license can be accepted from one to three years after the date of revocation. Makes a conforming change.

(d) Requires a fee twice the normally required renewal fee to be paid and other commission requirements, including continuing education requirements under Section 651.266, to be met in order for a revoked license to be reinstated. Makes conforming and nonsubstantive changes.

SECTION 23. Amends Section 651.304(e), Occupations Code, to require the commission by rule to prescribe reporting requirements for provisional license holders in addition to furnishing the required report forms.

SECTION 24. Amends Sections 651.351(d) and (f), Occupations Code, as follows:

(d) Requires a funeral establishment's required display of two full-sized adult caskets to be displayed in a casket showroom, in addition to certain other requirements of the merchandise display.

(f) Authorizes the three adult caskets not required to be full-sized under Subsection (d)(7) to be displayed in a partial panel display, by video, brochure, online, or any other manner, in addition to other requirements of the full-sized casket displays.

SECTION 25. Amends Section 651.353(d), Occupations Code, to provide that this section (Cemetery Establishment Requirements) does not apply to a perpetual care cemetery, in addition to other exceptions.

SECTION 26. Amends Sections 651.354(a), (c), and (d), Occupations Code, as follows:

(a) Deletes the exception provided by Subsection (d) of what a notice of impending expiration of a cemetery's or funeral establishment's license must state. Changes the deadline for the cemetery or funeral establishment to pay the required fee from September 30 to the expiration date of the license.

(c) Provides that the cemetery or funeral establishment may resume operation as such once the renewal fee and late penalty are paid after failing to renew the license for more than 30 days. Deletes a prohibition on renewing the license after the 30 day period and the requirement that the cemetery or funeral establishment obtain a new license before resuming operations.

(d) Provides that this section (Renewal of Cemetery or Funeral Establishment License) does not apply to perpetual care cemeteries. Makes a conforming deletion.

SECTION 27. Amends Subchapter H, Chapter 651, Occupations Code, by adding Section 651.355, as follows:

Sec. 651.355. PERPETUAL CARE CEMETERY REGISTRATION. Requires the Texas Department of Banking (department) to annually 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 each perpetual care cemetery on that list. Provides that a perpetual care cemetery is not required to pay a registration or renewal fee under this chapter.

SECTION 28. Amends Subchapter J, Chapter 651, Occupations Code, by adding Section 651.461, as follows:

Sec. 651.461. DEFENSE TO VIOLATION. Provides that a person licensed under this chapter does not violate this chapter by engaging in conduct under the direction of a person who represents to the license holder that the person is authorized to make such arrangements for the deceased and provides written directions to the license holder in the manner provided by Section 711.002 (Disposition of Remains; Duty to Inter), Health and Safety Code.

SECTION 29. Amends Section 651.507(a), Occupations Code, to make nonsubstantive changes.

SECTION 30. Amends Section 651.658(d), Occupations Code, to require a crematory, after failing to renew the license for more than 30 days, to pay the required renewal fee and late payment penalty to resume operation. Deletes the prohibition on the renewal of a license that has been expired for more than 30 days and the requirement of a new license to resume operation.

SECTION 31. (1) Repealer: Section 716.004(b) (Waiting Period for Cremation), Health and Safety Code.

(2) Repealer: Sections 651.304(b) (Employment Reports), 651.651(3) (definition of "perpetual care cemetery"), and 651.656(d) (Crematory Establishment License Required), Occupations Code.

SECTION 32. Makes application of Section 711.004(m), Health and Safety Code, as added by this Act, prospective.

SECTION 33. Makes application of Sections 651.165(d), 651.354, and 651.658(d), Occupations Code, as amended by this Act, prospective.

SECTION 34. Makes application of Section 651.1655, Occupations Code, as added by this Act, prospective.

SECTION 35. Makes application of Section 651.267, Occupations Code, as amended by this Act, prospective.

SECTION 36. Provides a deadline of January 1, 2008, for the department to provide the initial list of perpetual care cemeteries to the commission as required by Section 651.355, Occupations Code.

SECTION 37. Effective date: September 1, 2007.