
Texas Funeral Service Commission

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H.B. 1538 Chisum, et al (Shapleigh)

Summary

The Texas Funeral Service Commission (TFSC) was created in 1987 by expanding the authority and changing the name of the State Board of Embalming. The Commission regulates the funeral industry to protect the public from deceptive funeral practices. The Commission licenses about 5,000 funeral directors and embalmers, inspects and licenses 1,280 funeral homes and commercial embalming establishments, registers approximately 200 cemeteries and crematories, and investigates and resolves complaints regarding the industry from consumers or initiated by the agency. The Texas Funeral Service Commission operates on a \$1 million budget, collects approximately \$1.2 million in revenue from industry fees, and has 12 full-time employees.

House Bill 1538 continues the Commission for 12 years, and contains the Sunset Commission's recommendations to enhance consumer protection, authorize greater regulatory authority over cemeteries and crematories, and provide stakeholder input in the rulemaking process. The Legislature adopted all the Sunset recommendations, with modifications; and added provisions relating to cemetery regulation, Commission duties, and provisional licenses. The list below summarizes the major provisions of H.B. 1538, and a more detailed discussion follows.

Sunset Provisions

1. Continue the Commission for 12 Years, and Require Earlier Consumer and Industry Input on Rules.
2. Give the Commission Greater Regulatory and Enforcement Authority Over Cemeteries and Crematories.
3. Clearly Delineate the Authority of State Agencies to Address Consumer Complaints About Cemeteries.
4. Clarify TFSC's Authority to Define Standards of Professional and Ethical Conduct.
5. Prohibit Funeral Vendors or Service Providers from Making Misleading Statements.

Provisions Added by the Legislature

6. Establish Rotating Terms for the Commission Chair.
7. Create More Effective Complaint Review and Enforcement Processes.
8. Require the Finance Commission to Adopt Rules to Address Certain Perpetual Care Cemetery Services.

9. Exempt Certain Cemeteries From Regulation by the Commission and the Department of Banking.
10. More Clearly Define Certain Requirements for Provisional Funeral Directing Licenses.

Sunset Provisions

1. Continue the Commission for 12 Years, and Require Earlier Consumer and Industry Input on Rules.

This provision continues the Texas Funeral Service Commission for the standard 12-year period until 2015, and requires the Commission to develop guidelines for ensuring input from persons affected by a proposed rule, before the rule is published in the *Texas Register*.

2. Give the Commission Greater Regulatory and Enforcement Authority Over Cemeteries and Crematories.

The bill expands TFSC's authority to regulate crematories in the Commission's enabling statute in the Occupations Code, but modifies the Sunset recommendation to create a new chapter in the Health and Safety Code to regulate crematories. The Legislature also added a provision to prohibit TFSC inspections of perpetual care cemeteries, and to limit TFSC inspections of other cemeteries to within two years of an interment, or upon receipt of a complaint.

3. Clearly Delineate the Authority of State Agencies to Address Consumer Complaints About Cemeteries.

House Bill 1538 clearly defines the rulemaking authority of the Department of Banking (perpetual care cemeteries) and TFSC (non-perpetual care cemeteries) regarding cemetery regulation, and ensures that the Department of Banking retains the authority to enforce the financial regulation of perpetual care cemeteries. The bill authorizes the Commission to make rules, and enforce rules previously promulgated by the Texas Department of Health, including regulations on where cemeteries may be located and authority over interment, disinterment, disposal, and transportation of bodies, and to address related consumer complaints. The bill also authorizes shared responsibility between TFSC and the Texas Historical Commission for consumer complaints against historical cemeteries.

4. Clarify TFSC's Authority to Define Standards of Professional and Ethical Conduct.

House Bill 1538 authorizes the Commission to define all standards of professional conduct and ethical behavior for funeral directors, embalmers, crematory operators, funeral and embalming establishments, cemeteries, and crematories; and specifically prohibits behaviors such as fraud and forgery of a physician's signature on a death certificate. The bill also authorizes the Commission to define unethical treatment of a body after burial.

5. Prohibit Funeral Vendors or Service Providers from Making Misleading Statements.

House Bill 1538 specifically prohibits all vendors of funeral goods and services from making fraudulent statements or false claims to consumers.

Provisions Added by the Legislature

6. Establish Rotating Terms for the Commission Chair.

The Legislature adopted a provision to require the Governor to alternate every three years, between a public member and an industry member when selecting the Commission Chair.

7. Create More Effective Complaint Review and Enforcement Processes.

The Legislature added a provision to create a three-member panel of Commission members to review complaint cases and determine whether a funeral director's or embalmer's license should be temporarily suspended or restricted, if the license holder's continued activity would constitute a continuing threat to the public.

8. Require the Finance Commission to Adopt Rules to Address Certain Perpetual Care Cemetery Services.

The Legislature added a provision that requires the Finance Commission to adopt rules under the Department of Banking's regulation of perpetual care cemeteries to establish reasonable standards for timely placement of burial markers or monuments in a perpetual care cemetery, and to increase the amount of money a perpetual care cemetery must deposit into perpetual care fund accounts.

9. Exempt Certain Cemeteries From Regulation by the Commission and the Department of Banking.

The Legislature added a provision to exempt from TFSC and Department of Banking regulation all family, community, and fraternal cemeteries smaller than 10 acres, and all public cemeteries owned by the state, a county, or a municipality.

10. More Clearly Define Certain Requirements for Provisional Funeral Directing Licenses.

The Legislature added this provision to amend time limits for provisional funeral directing licenses and training requirements for provisional licensees. This provision allows persons to receive their provisional licenses and to begin training at a licensed funeral establishment prior to, or concurrently with, mortuary school enrollment. This provision also sets minimum time requirements for provisional license training, and removes the requirement that a provisional licensee take TFSC's written exam.

Fiscal Implication Summary

Overall, these changes will have no fiscal impact on the State. The provision to increase regulation of cemeteries and crematories could result in increased inspection and investigation costs, but increased licensing fees will cover these costs.