

SUBJECT: Regulating sellers of funeral merchandise

COMMITTEE: Business and Industry — favorable, without amendment

VOTE: 8 ayes — Brimer, Dukes, Corte, George, Giddings, Ritter, Siebert, Woolley
0 nays
1 absent — Solomons

WITNESSES: None

BACKGROUND: Art. 4582b, VTCS, governs funeral establishments, which are licensed and regulated by the Texas Funeral Services Commission.

Licensed funeral establishments that also sell funeral merchandise must maintain a display room containing a sufficient selection of caskets, including at least five adult caskets. The least expensive caskets must be displayed visibly in the same manner as a majority of the others.

Licensed funeral establishments also must represent accurately the quality of the merchandise offered for sale; make price lists available to the commission and to customers; and provide an itemized memo or purchase agreement at the time arrangements are made to buy merchandise. They are prohibited from offering fraudulent or deceptive service and from insinuating that concern for costs is disrespectful to the deceased.

DIGEST: HB 2255 would require any person or entity that sells funeral merchandise or caskets, but is not licensed as a funeral establishment, to abide by the same provisions that govern sale of these items by licensed establishments. The bill also would require that two of the minimum five caskets displayed in a showroom be full-size.

The bill also would require the Funeral Services Commission to adopt rules to regulate unlicensed sellers of funeral merchandise.

HB 2255 would take effect September 1, 1999.

**SUPPORTERS
SAY:**

Unlicensed sellers of funeral merchandise and caskets should be regulated, even if they do not provide funeral or embalming services.

Customers sometimes buy merchandise from providers other than funeral directors. Much of the merchandise sold by these companies is inferior in quality. Such companies often sell unseen merchandise out of catalogs or through toll-free numbers to customers who want or need to save money. Current law does not require these purveyors to disclose accurate information about price or quality as licensed establishments must do. People often receive poor-quality caskets from these distributors. Poorly built caskets can collapse during a service.

The Funeral Services Commission should regulate all aspects of the funeral industry, including marketers of funeral merchandise. Very few industries need to avoid consumer dissatisfaction as much as the funeral industry. Businesses that want to do business in Texas should submit to regulation.

Current law is vague about what portion of caskets on display must be full-size rather than cut-aways for display purposes. This bill would clarify that requirement.

**OPPONENTS
SAY:**

Companies that sell funeral merchandise but that do not offer funeral or embalming services should not be subject to regulation. Many businesses offering affordable merchandise from catalogs are located out of state. Subjecting these companies to Texas law would require them to maintain showrooms for their caskets, even though they may be strictly phone-order or mail-order businesses.

Caskets are very expensive, and they are usually more expensive when purchased from a licensed funeral establishment. Increasing regulation of companies that provide affordable products could discourage out-of-state companies or small local businesses from competing with licensed funeral directors, especially if these businesses were required to open a showroom. Less competition would drive prices even higher.

People have a right to buy inexpensive caskets. Often they cannot find them at licensed funeral homes but have to go through alternative suppliers. Some people realize that caskets are not intended to be a durable good, so quality is not always the first consideration.

The definition of “funeral merchandise” in current law applies to any product used in preparing or conducting a funeral, including items such cremation urns and guestbooks. Companies should not be subject to the same regulation as funeral establishments simply for providing this kind of merchandise.

The Funeral Services Commission could not regulate unlicensed providers of funeral merchandise effectively even if the commission had rulemaking authority over them. The agency’s most powerful penalty, license suspension, would be meaningless to one of these companies. The commission only could reprimand offending businesses, probably with little effect. Also, the commission would have no authority to regulate phone-order or catalog businesses based in other states.

OTHER
OPPONENTS
SAY:

If the Funeral Services Commission is to be charged with regulating unlicensed sellers of merchandise, the companies should be subject to licensing fees as funeral directors are.