

BILL ANALYSIS

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By: Carona
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DIGEST AND PURPOSE

Currently, Texas lacks adequate laws to regulate the cremation process. In the recent years, the number of cremations have increased and further regulation to protect consumers is necessary. As proposed, S.B. 306 provides a comprehensive regulation of the cremation process. This bill encompasses the licensing and registration of crematories; where crematories may be established and operated; training of crematory operators and employees; provisions for the oversight and disciplinary action of licensed crematory operators; procedures for handling cremated human remains and procedures for handling and identifying of cremated human remains.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Funeral Service Commission in SECTION 2 (Section 716.002, Health and Safety Code) and SECTION 14 (Section 651.656, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends the heading to Title 8C, Health and Safety Code, to read as follows:

SUBTITLE C. CEMETERIES AND CREMATORIES

SECTION 2. Amends Title 8C, Health and Safety Code, by adding Chapter 716, as follows:

CHAPTER 716. CREMATORIES SUBCHAPTER A. GENERAL PROVISIONS

Sec. 716.001. DEFINITIONS. Defines “authorizing agent,” “cemetery,” “commission,” “cremated remains,” “cremation,” “cremation chamber,” “cremation container,” “cremation internment container,” “crematory,” “crematory establishment,” “funeral director,” “funeral establishment,” “scattering area,” “temporary container,” and “urn.”

Sec. 716.002. CREMATION RULES. Authorizes the Texas Funeral Commission (commission) to adopt rules consistent with this chapter and Chapter 651 (Cemetery and Crematory Services, Funeral Directing, and Embalming), Occupations Code, to govern the cremation of human remains. Requires the commission, by rule, to establish minimum standards for crematory establishments related to sanitation and fire protection equipment essential to the health and safety of crematory personnel and the public.

Sec. 716.003. LOCATION OF CREMATORY. Authorizes a crematory to be constructed on or adjacent to a perpetual care cemetery or a funeral establishment. Provides that a crematory, other than a crematory registered with the commission on September 1, 2003, must adjoin a perpetual care cemetery or funeral establishment.

Sec. 716.004. WAITING PERIOD FOR CREMATION. Prohibits a crematory

establishment from cremating human remains within 48 hours of the time of death indicated on the death certificate unless the waiting period is waived in writing by a justice of the peace or medical examiner of the county in which the death occurred or a court order. Prohibits a crematory establishment that is not also licensed as a funeral establishment from accepting any deceased human remains for cremation until the cremation is authorized in writing by a justice of the peace or medical examiner of the county in which the death occurred.

Sec. 716.005. CREMATORY ESTABLISHMENT PROCEDURES. Authorizes a crematory establishment to adopt procedures that are not inconsistent with this chapter for the purpose of management and operation of a crematory.

Sec. 716.006. APPLICABILITY OF CHAPTER TO OTHER LAW. Prohibits the provisions of this chapter from being construed to require a funeral director to perform any act not otherwise authorized by other law.

[Reserves Sections 716.0007-716.050 for expansion.]

SUBCHAPTER B. AUTHORIZATION REQUIREMENTS

Sec. 716.051. CREMATION AUTHORIZATION. Prohibits, except as otherwise provided in this chapter, a crematory establishment from cremating human remains until it receives certain documents.

Sec. 716.052. CREMATION AUTHORIZATION FORM. Requires a cremation authorization form to contain certain information and include written notice to the authorizing agent that the authorizing agent assumes responsibility for the disposition of the cremated remains and that the crematory establishment may take certain measures relating to the cremated remains of a deceased person. Provides that, with an exception, a funeral director or other representative of a funeral establishment that contracts to provide for the cremation of deceased human remains must sign the cremation authorization form. Provides that the funeral director or representative is not responsible for any representations made by the authorizing agent unless the funeral director or representative has received a written statement that indicates a representation by the agent is false or misleading. Requires a crematory establishment to provide a cremation authorization form to an authorizing agent on request. Provides that a funeral director or other representative of a funeral establishment that contracts to provide for the cremation of deceased human remains is not required to sign a statement of intention to be cremated prepared by an individual before the individual's death.

Sec. 716.053. DELEGATION OF CREMATION AUTHORIZATION AUTHORITY.
(a) Authorizes an authorizing agent to delegate to a representative in writing the authority to execute a cremation authorization form.

(b) Provides that an authorizing agent's written delegation of authority must be notarized and include certain information.

[Reserves Sections 716.054-716.100 for expansion.]

SUBCHAPTER C. RECEIPT AND IDENTIFICATION OF REMAINS

Sec. 716.101. UNIDENTIFIED HUMAN REMAINS. Prohibits a crematory establishment from accepting unidentified human remains for cremation.

Sec. 716.102. RECEIPT ACKNOWLEDGING ACCEPTANCE OF REMAINS.
(a) Requires a crematory establishment to furnish to an individual who delivers deceased human remains to the crematory establishment a receipt that includes certain information.

(b) Requires a crematory establishment to retain a copy of the receipt required by Subsection (a) in the crematory establishment's records and to furnish a copy of the receipt to the authorized agent.

Sec. 716.103. IDENTIFICATION RESPONSIBILITY OF CREMATORY. Requires a crematory establishment to place on the exterior of a cremation container a label with the deceased person's name as provided by the authorizing agent unless the crematory establishment knows that the name is incorrect.

Sec. 716.104. IDENTIFICATION RESPONSIBILITIES OF FUNERAL DIRECTOR OR ESTABLISHMENT. Requires a funeral director or funeral establishment to provide a signed written statement to a crematory establishment that the human remains delivered to the crematory establishment were positively identified as the deceased person listed on the cremation authorization form by the authorizing agent or a representative of the authorizing agent delegated as provided by Section 716.053. Authorizes an authorizing agent or the delegated representative of the agent to identify a deceased person in person or by photograph.

[Reserves Sections 716.105-716.150 for expansion.]

SUBCHAPTER D. CREMATION PROCEDURES

Sec. 716.151. CREMATION CONTAINERS. Requires a person to deliver deceased human remains to a crematory establishment in a container that meets certain criteria. Prohibits a crematory establishment from removing human remains from a cremation container and provides that the crematory establishment must cremate the cremation container along with the human remains unless the authorizing agent requests otherwise in writing. Prohibits a crematory establishment from requiring that the deceased human remains be placed in a casket before cremation or that remains be cremated in a casket; and prohibits a crematory establishment from refusing to accept for cremation remains that have not been placed in a casket.

Sec. 716.152. CREMATION PROCESS. Provides that a crematory establishment is not required to accept a cremation container that evidences leakage of human body fluids. Prohibits a person other than a crematory establishment employee, the authorizing agent, or a representative delegated as provided by Section 716.053 from being present in a crematory area during the cremation of human remains or the removal of remains from the cremation chamber. Provides that a crematory establishment employee must perform certain functions immediately before placing deceased human remains in a cremation chamber. Requires the crematory establishment to remove all recoverable cremation residue from the cremation chamber after cremation and to pulverize any bone fragments. Requires the crematory establishment to remove and dispose of any other material included with the cremation residue.

Sec. 716.153. SIMULTANEOUS CREMATION. Prohibits, unless authorized in writing by the authorizing agent, a crematory establishment from simultaneously cremating the deceased human remains of more than one person in the same cremation chamber. Provides that a crematory establishment is not civilly or criminally liable for commingling human remains during cremation if an authorizing agent provides a signed written statement authorizing the simultaneous cremation.

Sec. 716.154. PACEMAKERS. (a) Prohibits a crematory establishment from cremating deceased human remains containing a pacemaker or other potentially hazardous implant.

(b) Requires an authorizing agent who knows of the existence of a pacemaker or other potential hazardous implant in deceased human remains to notify the funeral director or crematory establishment. Requires the authorizing agent to ensure that the pacemaker

or hazardous implant is removed from the remains before cremation.

(c) Provides that, if an authorizing agent discloses to a funeral director on the cremation authorization form the presence of a pacemaker or other potentially hazardous implant in the deceased humans remains, the funeral director must ensure that the pacemaker or hazardous implant is removed from the remains before delivering the remains to the crematory establishment.

(d) Provides that an authorizing agent or funeral director who violates Subsection (b) or (c) is liable to the crematory establishment in a civil action for any damages resulting from cremation of the remains containing the pacemaker or other potentially hazardous implant.

Sec. 716.155. TEMPORARY CONTAINER OR URN. (a) Requires a crematory establishment to place properly identified cremated remains in a temporary container or urn unless otherwise instructed in writing by the authorizing agent.

(b) Prohibits the crematory establishment from commingling the cremated remains with other cremated remains or including any other object in the temporary container or urn unless authorized in writing by the authorizing agent.

(c) Requires a crematory establishment to place a label on a temporary container disclosing that the temporary container is not intended for the permanent storage of cremated remains in a niche, crypt, cremation interment container, or interment space.

(d) Requires a crematory establishment to return all cremated remains to an authorizing agent or a representative delegated as provided by Section 716.053. Provides that any cremated remains that do not fit in a temporary container must be returned to the authorizing agent or representative in a separate temporary container that meets the requirements of this section.

(e) Authorizes a crematory establishment to ship cremated remains only by method that has an internal tracking system that provides a receipt signed by the person accepting delivery. Provides that the exterior of the box containing cremated remains for shipment must display a label containing certain information.

Sec. 716.156. RELEASE OF REMAINS. (a) Requires a crematory establishment to release the cremated remains either to the individual authorized to receive the remains on the cremation authorization form or to the shipping address provided by the authorizing agent on the cremation authorization form no later than the 30th day following the date of cremation.

(b) Requires a crematory establishment to furnish to an individual who receives the cremated remains a receipt containing certain information.

(c) Requires the crematory to retain a copy of the receipt required by this section in the crematory establishment's records.

[Reserves Sections 716.157-716.200 for expansion.]

SUBCHAPTER E. DISPUTES AND LIABILITY

Sec. 716.201. CREMATION DISPUTE. (a) Authorizes, unless a court order or other suitable confirmation indicates a dispute has been resolved or settled, a crematory establishment, funeral establishment, cemetery, or other person to refuse to accept deceased human remains or to perform a cremation if the crematory establishment, funeral establishment,

cemetery, or other person refusing the remains is aware of any of certain factors.

(b) Authorizes a crematory establishment, funeral establishment, cemetery, or other person to refuse to release the remains until either the dispute has been resolved or settled or the crematory establishment, funeral establishment, cemetery, or other person is authorized by court order to release or dispose of the remains.

(c) Provides that a crematory establishment, funeral establishment, cemetery, or other person is not liable in a civil action for refusing to cremate human remains in accordance with Subsection (a) or for refusing to release or dispose of cremated remains or for releasing or disposing of cremated remains in accordance with Subsection (b).

Sec. 716.202. **LIABILITY OF AUTHORIZING AGENT.** Provides that an authorizing agent who signs a cremation authorization form is subject to Section 711.002(f) (Disposition of Remains; Duty to Inter) and attests to the truthfulness of the facts set forth in the form, including the identity of the deceased person and the agent's authority under this chapter.

Sec. 716.203. **LIABILITY OF CREMATORY ESTABLISHMENT, FUNERAL ESTABLISHMENT, FUNERAL DIRECTOR, CEMETERY, OR OTHER PERSON.**

(a) Provides that a crematory establishment, funeral establishment, funeral director, cemetery, or other person that contracts to provide for a cremation, cremates human remains, or releases or disposes of the cremated remains as provided on a cremation authorization form is not criminally or civilly liable performing the actions authorized.

(b) Provides that a crematory establishment is not criminally or civilly liable for disposing of cremated remains after the 60th day after the date of cremation in accordance with this chapter if two certain conditions are met.

(c) Provides that a crematory establishment is not liable for damages in a civil action for any valuables delivered with human remains if the crematory establishment exercises reasonable care in protecting the valuables.

(d) Provides that a crematory establishment, funeral establishment, funeral director, cemetery, or other person is not liable in a civil action for certain actions.

[Reserves Sections 716.204-716.250 for expansion.]

SUBCHAPTER F. RECORDS

Sec. 716.251. **CREMATORY ESTABLISHMENT RECORDS.** (a) Requires a crematory establishment to maintain a record at its place of business of each cremation. Provides that the record must contain certain information.

(b) Provides that a record must be kept on file at least until the fifth anniversary of the cremation.

[Reserves Sections 716.252-716.300 for expansion.]

SUBCHAPTER G. DISPOSITION OF REMAINS

Sec. 716.301. **TRANSPORT OF CREMATED REMAINS.** Authorizes a crematory establishment, an authorizing agent or the representative delegated by the authorizing agent, on delivery of the cremated remains by a crematory establishment, to transport the remains without a permit in any manner in this state and finally dispose of the remains in accordance with this subchapter.

Sec. 716.302. DISPOSITION OF CREMATED REMAINS. (a) Requires an authorizing agent to provide to a crematory establishment a signed written statement disclosing the final disposition of the cremated remains, if known. Requires the crematory establishment to retain a copy of the statement in the crematory establishment's records.

(b) Provides that the authorizing agent is responsible for disposing of the cremated remains.

(c) Authorizes the crematory establishment, no earlier than the 60th day following the date of cremation, to dispose of the cremated remains in accordance with this subchapter, if the authorizing agent, or the agent's representative has not specified the final disposition of or claimed the cremated remains. Requires the crematory establishment to retain a record of the disposition in the crematory establishment's records.

(d) Provides that an authorizing agent is responsible for all reasonable expenses incurred in disposing of the cremated remains under Subsection (c).

(e) Authorizes a person to dispose of cremated remains only in certain designated places.

Sec. 716.303. COMMINGLING OF REMAINS. Prohibits a person, unless authorized in writing by the authorizing agent, from disposing of or scattering cremated remains in a manner or at location that commingles the remains with other cremated remains except by certain methods, or from placing the cremated remains of more than one deceased person in the same closed container, except as provided by Subsection (b). Authorizes a person to place the cremated remains of family members or other persons cremated simultaneously in accordance with Section 716.153 in a container designed for the remains of more than one deceased person.

Sec. 716.304. SCATTERING REMAINS. Authorizes a person to scatter cremated remains in certain locations if the remains are reduced to a particle size of one-eighth inch or less. Provides that cremated remains must be removed from the container before the remains are scattered.

[Reserves Sections 716.305-716.350 for expansion.]

SUBCHAPTER H. PENALTY

Sec. 716.351. CRIMINAL PENALTY. Provides that a person or an employee of a person commits an offense if the person or employee engages in certain activities. Provides that an offense under this section is a Class B misdemeanor.

SECTION 3. Amends Section 651.5061, Occupations Code, as follows:

Sec. 651.5061. New heading: WAIVER OF HEARING BY FUNERAL OR CREMATORY ESTABLISHMENT. Makes a conforming change.

SECTION 4. Amends Section 651K, Occupations Code, by adding Section 651.508, as follows:

Sec. 651.508. ENFORCEMENT OF LAW REGULATING CREMATORIES. Provides that, for purposes of this subchapter, a person who violates Chapter 716, Health and Safety Code, violates this chapter. Provides that an owner or operator of a crematory establishment licensed under Subchapter N (Registration Requirements: Cemeteries and Crematories) is responsible for the conduct of the business of the crematory establishment under Chapter 716,

Health and Safety Code.

SECTION 5. Amends Chapter 651L, Occupations Code, by adding Section 651.559, as follows:

Sec. 651.559. ENFORCEMENT OF LAW REGULATING CREMATORIES. Provides that, for purposes of this subchapter, a person who violates Chapter 716, Health and Safety Code, violates this chapter. Provides that an owner or operator of a crematory establishment licensed under Subchapter N (Registration Requirements: Cemeteries and Crematories) is responsible for the conduct of the business of the crematory establishment under Chapter 716, Health and Safety Code.

SECTION 6. Amends Section 651.601, Occupations Code, by adding Subsection (a-1), to authorize the commission to bring an action for appropriate injunctive relief against a crematory establishment that violates this chapter or a rule adopted under this chapter.

SECTION 7. Amends the heading to Chapter 651N, Occupations Code, to read as follows:

SUBCHAPTER N. REGISTRATION AND LICENSING REQUIREMENTS:
CEMETERIES AND CREMATORIES

SECTION 8. Amends Section 651.651, Occupations Code, as follows:

Sec. 651.651. New heading: DEFINITIONS. Adds definitions for the terms “cremation” and “crematory establishment” to existing language. Makes nonsubstantive changes.

SECTION 9. Amends Section 651.652(b), Occupations Code, to eliminate a crematory from the application of this chapter.

SECTION 10. Amends the heading to Section 651.653, Occupations Code, to read as follows:

Sec. 651.653. CEMETERY REGISTRATION REQUIREMENTS.

SECTION 11. Amends Sections 651.653 (a), (b), and (d), Occupations Code, to make conforming changes.

SECTION 12. Amends the heading to Section 651.655, Occupations Code, to read as follows:

Sec. 651.655. RENEWAL OF CEMETERY REGISTRATION.

SECTION 13. Amends Section 651.655(c), Occupations Code, to make a conforming change.

SECTION 14. Amends Chapter 651N, Occupations Code, to add Sections 651.656, 651.657, and 651.658, as follows:

Sec. 651.656. CREMATORY ESTABLISHMENT LICENSE REQUIRED.

(a) Prohibits a person who is not the owner or operator of a crematory business and who does not hold a crematory establishment license issued by the commission from conducting a crematory business in this state.

(b) Prohibits a person who does not hold a funeral license or own or operate a perpetual care cemetery from holding a crematory license.

(c) Provides that Subsection (b) does not apply to the owner or operator of a crematory registered with the commission on September 1, 2003.

(d) Requires the commission, by rule, to establish the fee for a crematory establishment license under this subchapter in an amount sufficient to cover the costs of regulating crematory establishments under this subchapter, including discipline and investigation of complaints.

Sec. 651.657. CREMATORY ESTABLISHMENT LICENSE APPLICATION.

(a) Requires an applicant for a crematory establishment license to submit a written license application to the commission and pay the application fee.

(b) Requires an application for a license or renewal of a license as a crematory establishment to include certain information.

(c) Requires an application for a license or renewal of a license to be on a form furnished by the commission.

Sec. 651.658. CREMATORY ESTABLISHMENT LICENSE RENEWAL AND ANNUAL REPORT; PENALTY. (a) Provides that a crematory establishment must perform certain functions on an annual basis in order to renew a crematory establishment license.

(b) Requires the commission to mail written notice to a license holder of the impending expiration of the license no later than the 30th day before the expiration date of the license. Provides that the notice must state that the license holder must, in order to renew the license, pay the renewal fee no later than the date when the license expires.

(c) Provides that a license holder who fails to pay the renewal fee on or before the expiration date is subject to a late payment penalty equal to the amount of the renewal fee.

(d) Provides that a person may not renew a license that has been expired for more than 30 days, and that a person holding a license that has been expired for more than 30 days must apply for a new license.

(e) Requires the commission to grant an extension for filing the annual report required by this section on the written request of a crematory establishment for good cause. Prohibits such an extension from exceeding 60 days, but authorizes the commission to grant additional extensions for good cause.

(f) Requires the commission to impose a \$100 late fee for each day that a crematory establishment fails to submit the annual report required by this section if an extension has not been granted.

SECTION 15. Repealer: Section 711.006, Health and Safety Code (Limitations on Crematory Construction and Operation).

SECTION 16. (a) Requires the commission, no later than November 1, 2003, to develop the crematory application form required for licensing and license renewal under Section 651.657, Occupations Code, as added by this Act; to adopt the rules and minimum standards required by Section 716.002, Health and Safety Code, as added by this Act; to establish the procedures and qualifications for a crematory establishment license as required by Chapter 651N, Occupations Code, as amended by this Act; and to determine the organizations approved to train and certify the owner or operator of the crematory as required by Section 651.688 (a) (4), Occupations Code, as added by this Act.

(b) Authorizes an owner or operator of a crematory registered as required by Chapter 651N, Occupations Code, before the effective date of this Act to continue to conduct a crematory business in this state after that date in the same manner as if the crematory held a crematory

establishment license under Chapter 651N, Occupations Code, as amended by this Act.

(c) Requires an owner or operator of a crematory that is registered as required by Chapter 651N, Occupations Code, before the effective date of this Act, to comply with the licensing renewal and annual report requirements of Section 651.658, Occupations Code, as added by this Act, on the first renewal of the registration that occurs after December 31, 2003.

(d) Provides that Chapter 651N, Occupations Code, as amended by this Act, and Chapter 716, Health and Safety Code, as added by this Act, apply only to the operation of a crematory establishment on or after January 1, 2004.

(e) Provides that the repeal by this Act of Section 711.006, Health and Safety Code, applies only to a cause of action that accrues on or after January 1, 2004.

SECTION 17. Effective date: September 1, 2003, except that Section 15 of this Act takes effect January 1, 2004.