

BILL ANALYSIS

H.B. 1292
By: Raymond
Public Health
Committee Report (Unamended)

BACKGROUND AND PURPOSE

Interested parties contend that the law governing the funeral industry needs to take into account the evolution of the industry and more accurately reflect current practices. H.B. 1292 seeks to update the applicable law so that it reflects the existing state of the Texas Funeral Service Commission and the businesses the commission regulates.

CRIMINAL JUSTICE IMPACT

It is the committee's opinion that this bill does not expressly create a criminal offense, increase the punishment for an existing criminal offense or category of offenses, or change the eligibility of a person for community supervision, parole, or mandatory supervision.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Texas Funeral Service Commission in SECTIONS 15 and 49 of this bill.

ANALYSIS

H.B. 1292 amends the Occupations Code to specify that the member of the Texas Funeral Service Commission who is a registered cemetery owner or operator must be licensed as a funeral director. The bill includes among the fees the commission is required to set a renewal fee, late renewal penalty, replacement license fee, continuing education provider fee, continuing education course fee, and continuing education noncompliance fee and removes the prohibition against the commission charging a fee to a perpetual care cemetery. The bill requires the inspection of a crematory or funeral establishment before an initial license may be issued to the crematory or funeral establishment and removes licensed cemeteries from the establishments subject to the inspection requirements for a licensed crematory or funeral establishment. The bill clarifies that an inspection report is required to be retained in the crematory's or funeral establishment's licensing file. The bill removes the exemption for a perpetual care cemetery from inspection requirements, repeals the exemption for a perpetual care cemetery from cemetery or funeral establishment license requirements, and repeals provisions relating to the registration of perpetual care cemeteries. The bill authorizes the commission to allow a funeral establishment that maintains a website to link to the commission's website. The bill clarifies statutory language relating to the commission's maintenance of a record of a complaint.

H.B. 1292 removes statutory requirements relating to an application for a funeral director's license or an embalmer's license and instead authorizes the commission to adopt license application requirements for such a license and to provide that a person applies for such a license by completing a provisional license program. The bill makes the license valid for 24 months, replaces the authorization for the commission to adopt a system under which licenses expire on various dates during the year with a requirement that the commission adopt such a system, and clarifies the situation in which the commission is required to prorate license fees. The bill revises the examinations that an applicant must complete to be eligible for a license, removes from the

conditions for eligibility that an applicant attain a specific score on an examination, and exempts an applicant who is seeking a reciprocal license from the condition that an applicant complete all of the necessary requirements of the provisional license program. The bill authorizes the commission to adopt rules to allow an applicant who graduated from a school or college of mortuary science that is no longer accredited to become licensed as a funeral director or embalmer. The bill removes statutory provisions specifying the manner in which an examination for a funeral director's license or an embalmer's license must be conducted and includes among the required components of the mortuary law examination administered by the commission local and state rules and laws relating to the preparation and transportation of dead human bodies. The bill requires an individual to receive a grade of at least 75 percent to pass the examination. The bill revises application requirements for an out-of-state license holder who applies for a funeral director's license or an embalmer's license.

H.B. 1292 changes the name of the license issued by the commission following the loss or destruction of an original license from a duplicate license to a replacement license, requires the commission to issue a duplicate original license on application and payment of a fee set by the commission for the license if the license holder needs a license to display in multiple locations, and requires a license holder to conspicuously display the holder's duplicate original license or replacement license in each place of business at which the license holder practices. The bill limits the exemption for certain retired applicants from continuing education requirements. The bill specifies that the examination a person must retake and pass to reinstate a license that has been expired for one year or more is the mortuary law examination and conditions the authorization for an applicant who is licensed in Texas and in another state to obtain a new license on both of the licenses being in good standing. The bill conditions the authorization for a person whose license has been suspended to reinstate the license on the reinstatement being authorized by the commission and that the person complete any required continuing education and pass the mortuary law examination with a score of at least 75 percent. The bill changes the person whom the commission may designate to hold a hearing to determine whether to reissue a license that has been revoked from a hearings officer to an administrative law judge, specifies that the examination an applicant for a reissued license must retake and pass is the mortuary law examination, and adds as a condition for the reissuance of a revoked license that the applicant pay any penalty assessed by the commission. The bill repeals provisions relating to a foreign student of mortuary science, a provisional license, and the renewal of an expired license by an out-of-state practitioner.

H.B. 1292 revises requirements relating to the merchandise a funeral establishment must display, requires a funeral establishment to conspicuously display the establishment's license, and changes the circumstances that determine the duration of an exemption granted by the commission from requirements relating to a preparation room for embalming services. The bill removes from the conditions an establishment must meet to be considered a commercial embalming establishment that the establishment meet the requirements for an embalmers license and revises the funeral establishment license requirements with which the establishment must comply. The bill removes the requirement for a funeral director or embalmer to direct and personally supervise the pickup of a dead human body on first call and for a funeral director to personally make the transfer under certain circumstances. The bill instead requires a funeral director to direct the pickup of a dead human body and authorizes the transfer of a dead human body without a funeral director directing the transfer at the direction of a justice of the peace or other law enforcement official. The bill authorizes a funeral director to direct an unlicensed person, a provisional license holder, or an embalmer in the removal of a dead human body. The bill makes a funeral director who directs the removal of a dead human body by an unlicensed person strictly accountable for compliance with applicable requirements. The bill extends the duties of an unlicensed person who inadvertently encounters a family member or other person with whom funeral arrangements are normally made to a provisional license holder or an embalmer and removes from those duties arranging an appointment with the unlicensed person's employer for a family member or other person who indicates a desire to make funeral arrangements for the deceased. The bill requires a commercial embalming establishment to

designate to the commission an embalmer in charge and promptly notify the commission of any change in that designation. The bill makes the embalmer in charge directly responsible for the embalming business of the commercial embalming establishment and ultimately responsible for compliance with mortuary laws. The bill establishes that the embalmer in charge may be charged with a violation of provisions relating to cemetery and crematory services, funeral directing, and embalming if a violation occurs in the commercial embalming establishment.

H.B. 1292 specifies the manner in which a funeral establishment that releases a body to a school of mortuary science is required to make the records of the funeral establishment reasonably available for inspection by the person who provided the consent and removes the next of kin of the deceased person as a person to whom the establishment must make the records available for inspection. The bill clarifies the circumstances under which a person commits unethical conduct regarding embalming, a funeral establishment, or funeral services and specifies that in order for a license holder to qualify for a defense to a violation regarding funeral arrangements the requisite statement made by a person who directs the license holder must be in writing.

H.B. 1292 removes the requirement that a hearing be held before the commission may take certain disciplinary action against a person and instead authorizes the commission to issue a letter of warning, assess an administrative penalty, revoke or suspend a license, place a license holder on probation, or impose any combination of those penalties if the commission determines that a person regulated under provisions relating to cemetery and crematory services, funeral directing, and embalming has violated those provisions or rules adopted under those provisions. The bill repeals a provision relating to the commission's issuance of a reprimand. The bill removes the authorization for the commission to refuse to issue a license or provisional license for certain violations before a hearing or a waiver of a right to a hearing and instead adds as a condition on the commission's authority to refuse to issue a license under those circumstances that the commission do so only after a hearing before the commission. The bill expands this authority to include refusing to renew a license or provisional license under those circumstances, includes among those persons to whom the commission may refuse to issue or renew a license a person who has a criminal conviction, and clarifies that the commission is authorized to order, after such a hearing is held, that a license be issued or renewed on a probationary basis through execution of an agreed order. The bill repeals a provision relating to the right of a person applying for a funeral director's or embalmer's license who has a criminal conviction to request a hearing and repeals provisions relating to the required appointment of a disciplinary panel to determine whether a funeral director's or embalmer's license should be temporarily suspended or restricted.

H.B. 1292 requires the commission, if the commission determines that a violation has occurred after examining a possible violation and the facts relating to that violation, to issue a preliminary report stating the facts on which the determination is based, that a sanction may be imposed, and the types of sanctions that may be imposed for the violation. The bill requires the commission, not later than the 10th day after the date the report is issued, to send a copy of the report and certain statements to the person charged with the violation. The bill establishes that, until a hearing has been held on the possible violation, the possible violation and the sanctions that may be imposed may be disclosed only to the person charged with the violation, unless that person has waived the right to a hearing or paid the amount to the commission. The bill authorizes the commission to suspend or revoke the license of a license holder who is placed on probation without a hearing if the commission determines the license holder violated the terms of probation and authorizes the license holder to appeal the decision in the specified manner. The bill repeals provisions relating to the right to obtain a tape or transcript of a disciplinary proceeding, to communication with a party to the proceeding, and to a waiver of a hearing by a funeral or crematory establishment. The bill requires the commission by rule to adopt procedures governing informal disposition of a contested case and an informal proceeding held in compliance with Government Code provisions relating to license holders. The bill requires those rules to provide the complainant and the license holder an opportunity to be heard and require the presence of a representative of the commission's legal staff or of the attorney general to

advise the commission or the commission's employees. The bill changes the type of publicly posted information regarding violations that the commission is required to adopt from penalty guidelines to a sanction schedule.

H.B. 1292 repeals the following provisions of the Occupations Code:

- Section 651.257
- Section 651.2595
- Section 651.264
- Section 651.354(d)
- Section 651.355
- Sections 651.502(c) and (d)
- Section 651.5026
- Section 651.504
- Sections 651.506(g) and (h)
- Section 651.5061
- Section 651.559

EFFECTIVE DATE

September 1, 2017.