

## ***Funeral Consumers Alliance of Texas - 82nd Texas Legislature Report Jan-May, 2011***

### Introduction

This session was thought to be easy for FCA because of the state budget emphasis, but this proved to be naive on my part. Industry was very active and aggressive, but in many ways more cooperative than in previous sessions; except for a few notable confrontations.

The corporate lobbyists seem to understand better how to deal with FCA than the lobbyists for the independents. I think the corporate lobbyists and lawyers are aware of the image problem the industry has, and try to balance their aggressive profit goals with a gentler footprint through the process; it helps them reach their goals with legislators whom (surprisingly this session), seem tired of the old tactics of greed, trickery and power. Maybe. It is still ... and always will be ... politics.

I made over 11 round trips to the Capitol this session, logging over 5000 miles of highway; putting in hundreds of hours of research, emails, phone calls, meetings, testimonies, and face-to-face mediations. I have slept in hotels, my travel trailer, sofas, and guest bedrooms; taken naps in the capitol parking garage. A few of the trips were down and back, Fort Worth-Austin-Fort Worth, in a single day. Interstate 35 is just one long driveway to me.

But, **We won !** I don't think we lost anything this session, and we gained on several counts. The hard work and support you do for FCA is the strength and power we have to accomplish what needs to be done at the Capitol. Critical-moment support calls, and emails from Texas FCA affiliates to legislators targeted at specific bills, successfully stopped bad legislation. Those efforts of teamwork showed the legislators that FCA does indeed exist, and is comprised of people who care more about others than themselves.

### Abstract

Several bills were passed by the legislature, then signed into law by Governor Perry on June 17, 2011. Most will go into effect September 1, 2011, with ensuing administrative code to be developed by the affected regulatory agencies.

Tissue donation for research and education is now regulated. Prepaid funeral contracted funeral homes are now covered by the Texas Guaranty Fund if that funeral home ceases operation. The dollar limit for prepaid contracts has been lifted, but tied to the funeral contract. A timeline/deadline has been set down to bring families to closure making funeral arrangements, with a priority list of whom is responsible. Lawn crypt sales are now highly regulated to ensure that consumers' pre-payments are not squandered before construction is complete. Insurance claim filing fees imposed by a funeral director must now be disclosed to the consumer. The funeral director in charge can be distanced from an errant employee if a complaint is filed.

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A few anti-consumer items appeared, but were stopped; most notably the attempted removal of the word “negligence” from the regulations controlling funeral directors’ actions. Also, an attempt was made to shield the funeral director in charge of any responsibility by an errant employee. An attempt was made to abolish the Texas Funeral Service Commission, but this was stopped.

Bills Signed into Law

To read the actual bills, go to <http://www.capitol.state.tx.us> and type in the bill number in the “Search Legislation” box near the top of the web page.

**SB 864**

- Stipulates that the cost of filing an insurance claim by the funeral director on behalf of the consumer must be disclosed in the Cash Advance section of the funeral contract.
- The Texas Funeral Service Commission “may” consider the level of responsibility a funeral director in charge has over his employee charged with a violation. (FCA lobbied successfully for the word “may” rather than “shall” in the language. If you read the detail of the draft bill, this will make sense.)
  - Also, the original bill HB 1708 with the above language, included the below language that would make it nearly impossible to regulate bad funeral directing:
    - “ (3) engages in dishonest and [~~conduct,~~] wilful conduct[~~, or negligence~~] in the practice of embalming or funeral directing that is likely to or does deceive or[~~,~~] defraud[~~, or otherwise injure~~] the public;”
    - FCA was fortunate when the above language never made it to the House floor because I believe the House committee was not pleased in the way Rep. Gutierrez and the industry lobbyist did not communicate in good faith with FCA prior to hearings.

**SB 187**

- The first regulation of non-transplant tissue procurement in Texas.
  - Requires the Texas Anatomical Board to publish an informational document and have it available on their website.
  - Requires labeling of all tissue containers.
    - “CONTENTS DERIVED FROM DONATED HUMAN TISSUE”
    - This label developed and worded by FCAT.
  - Requires chain-of-custody of all body parts.
    - Written by FCAT.

**HB 3004**

- Adds to the excellent prepaid funeral law passed last session which covered defaulting insurance-funded prepaid funeral contracts.

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- Added coverage for consumers if a funeral home defaults on the prepaid contract with the funeral home.
- Requires the insurance contract provider to first try to find a substitute funeral home provider if there is a default. This helps the industry to self-regulate, and tries to avoid using taxpayer expense for the Department of Banking to find a substitute provider. If a substitute cannot be found by industry, the Texas Department of Banking will find a substitute and pay for it out of the state Guaranty Fund if necessary.

**HB 2495**

- Stipulates a timeline for families to make body disposition plans.
  - 6 days after being notified of death; 10 days after not being notified of death.
  - Also lists the order of responsibility within the family who must make the disposition decision.
  - This new law addresses the too frequent family squabbles over body disposition.
- Defines lawn crypts more accurately.
  - Regulates lawn crypt sales and pre-sales, ensuring that industry does not “take the money and run” or default on the contract without consumer protection.
  - Stipulates time-based deadlines for construction start and completion of lawn crypts with consumer protection inserted to terminate the contract.
  - Establishes criminal penalties for violating this new law on the part of industry.

**SB 579**

- Informally dubbed the “Bates Bill” by industry because the initial draft had technical and legal errors from industry that were corrected; including additional consumer protection not originally intended.
  - This law removes the \$15,000 limit for prepaid funeral contracts imposed many years ago, not allowing for inflation.
  - The law now limits the prepaid contract to the cost of the funeral benefits, and no more.
  - It also applies to any combined coverage industry can write, limiting costs to just the funeral goods and services contract.

Bills that Died

**HB 2029**

- This bill was an attempt to regulate 3rd party cemetery brokers who sell burial plots.
  - It was to require a reasonable amount of paperwork to document the sale.
  - The impetus for the bill was to address the online 3rd party brokers who come and go; leaving no tracks and no reliable paperwork of the transaction.

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- This can lead to problems later when two people think they own the right of sepulture to the same plot.
- FCA was for this bill, but a cemetery broker in Dallas testified against the bill for numerous reasons; and was not very willing to compromise some in the language to help it through the process.
  - In this 82nd session with the emphasis on the budget, bills that had AGAINST testimony were typically sent to the trash to save time for bills that had been worked out ahead of time by interested and affected parties.

**HB 2665**

- This bill attempted to abolish the Texas Funeral Service Commission and move its duties to the Texas Department of Licensing and Regulation.
  - FCAT lobbied behind the scenes with industry to kill this bill as soon as possible.
  - The unique consumer nature of deathcare, and the fact that this is affirmed in the Federal Trade Commission Funeral Rule, made it appear to be a bad idea to place these issues under a generic regulatory agency not versed in the emotional and timeliness factors of the consumer experience related to deathcare.
  - The idea was to save money, but the TFSC has a small budget relative to other agencies and is noted for its efficiency, frugality and value impact to consumers and industry.

Conclusion

FCA involvement and success in the Texas 82nd legislative session was productive and protective for funeral consumers in Texas. Since Texas is one of the “Big 4” states (California, Texas, New York and Florida) , it is also helpful to consumers in those states and smaller states because Texas is proactive and continues to set precedence in consumer protection for funerals, cemeteries, prepaid plans, and tissue donation. Action in Texas can then be used by FCA advocates in other states to help persuade their legislatures to increase consumer protection and hold the line against industry protectionism.

We got a lot done this rodeo.

Special thanks to Lamar Hankins for legal and coaching support throughout the session.  
Special thanks to Diane Kissel for being patient while I put many honey-do’s on hold.

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Respectfully submitted,  
Jim Bates  
Director, Funeral Consumers Alliance of Texas

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