

AN ACT

relating to the continuation and functions of the Texas Funeral Service Commission, including certain functions transferred to the commission from the Texas Department of Health, and the powers and duties of the Texas Finance Commission and the banking commissioner of Texas regarding cemeteries; providing administrative and civil penalties.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 651.001, Occupations Code, is amended by adding Subdivision (12-a) to read as follows:

(12-a) "Perpetual care cemetery" means a cemetery regulated under Chapter 712, Health and Safety Code.

SECTION 2. Section 651.002, Occupations Code, is amended to read as follows:

Sec. 651.002. APPLICATION OF SUNSET ACT. The Texas Funeral Service Commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished and this chapter expires September 1, 2015 [~~2003~~].

SECTION 3. Section 651.003(a), Occupations Code, is amended to read as follows:

(a) This chapter does not affect the authority of the Texas Department of Banking to enforce Chapter 154, Finance Code, or to regulate perpetual care cemeteries.

1 SECTION 4. Subchapter A, Chapter 651, Occupations Code, is  
2 amended by adding Section 651.004 to read as follows:

3 Sec. 651.004. REGULATION OF CEMETERY AND CREMATORY  
4 SERVICES. (a) The commission shall regulate cemetery and  
5 crematory services as provided by this chapter and Chapter 716,  
6 Health and Safety Code.

7 (b) The commission may not regulate cemetery or crematory  
8 services that occur after burial or inurnment unless the services  
9 relate to the care and treatment of the remains in an urn, casket,  
10 or outer enclosure.

11 SECTION 5. Section 651.057(a), Occupations Code, is amended  
12 to read as follows:

13 (a) The governor shall designate one [~~public~~] member of the  
14 commission as the presiding officer of the commission to serve in  
15 that capacity for three years [~~at the pleasure of the governor~~]. In  
16 designating presiding officers, the governor shall alternate  
17 between public and nonpublic members.

18 SECTION 6. Section 651.151(a), Occupations Code, is amended  
19 to read as follows:

20 (a) The commission shall establish proficiency,  
21 professionalism, ethics, and qualification standards for  
22 individuals issued a license under this chapter [~~funeral directors~~  
23 ~~and embalmers~~].

24 SECTION 7. Section 651.152, Occupations Code, is amended to  
25 read as follows:

26 Sec. 651.152. RULES; PROCEDURES; FORMS. The commission  
27 shall [~~may~~] adopt rules, establish procedures, and prescribe forms

1 necessary to administer and enforce this chapter and Chapters 714  
2 and 715, Health and Safety Code.

3 SECTION 8. Subchapter D, Chapter 651, Occupations Code, is  
4 amended by adding Section 651.1525 to read as follows:

5 Sec. 651.1525. EARLY PARTICIPATION IN RULEMAKING PROCESS;  
6 GUIDELINES. (a) Before publishing a proposed rule for public  
7 comment, the commission shall seek advice and opinions from persons  
8 who will be most affected by the rule. At a minimum, those persons  
9 must include consumer groups and trade associations that represent  
10 persons from each group regulated by the commission, including  
11 funeral directors and cemetery and crematory operators.

12 (b) The commission shall develop guidelines to implement  
13 this section. The guidelines must establish a method to determine  
14 who will be most affected by a proposed rule.

15 SECTION 9. Section 651.154, Occupations Code, is amended by  
16 amending Subsection (a) and adding Subsection (c) to read as  
17 follows:

18 (a) The commission shall set the following fees in amounts  
19 reasonable and necessary to administer this chapter:

20 (1) the funeral director's and embalmer's application  
21 fee, license fee, duplicate license fee, and reciprocal license  
22 fee; and

23 (2) the cemetery or funeral establishment license fee,  
24 renewal fee, and late renewal penalty.

25 (c) The commission may not charge a fee to a perpetual care  
26 cemetery, including a fee for issuing or renewing a license issued  
27 under this chapter.

1 SECTION 10. Section 651.157, Occupations Code, is amended  
2 to read as follows:

3 Sec. 651.157. INSPECTION OF CEMETERY, CREMATORY, OR FUNERAL  
4 ESTABLISHMENT. (a) Except as provided by Subsection (b), a  
5 licensed cemetary, crematory, or funeral establishment shall be  
6 inspected at least once every two years by an agent of the  
7 commission or by an agent of the state or a political subdivision  
8 authorized by the commission to make inspections on its behalf.

9 (b) If the commission finds a violation of this chapter or  
10 of Chapter 193, ~~[or]~~ 361, 711, 714, 715, or 716, Health and Safety  
11 Code, the commission shall inspect the cemetary, crematory, or  
12 funeral establishment annually until the commission determines  
13 that the establishment is free of violations.

14 (c) A report of each inspection made under this section  
15 shall be filed with the commission.

16 (d) The commission by rule shall establish:

17 (1) procedures for the inspection of a cemetary,  
18 crematory, or funeral establishment required by this section; and

19 (2) criteria, including consideration of the  
20 establishment's inspection and complaint history, regarding when  
21 the commission should inspect an establishment based on the risk of  
22 a violation at an establishment.

23 (e) A premises on which funeral directing, interment,  
24 cremation, or embalming is practiced shall be open at all times to  
25 inspection for any violation of this chapter or of Chapter 193, ~~[or]~~  
26 361, or 716, Health and Safety Code, by:

27 (1) an agent of the commission;

1 (2) an authorized agent of the state; or

2 (3) an authorized agent of the county or municipality  
3 in which the premises is located.

4 (f) Before a commission agent inspects a cemetery,  
5 crematory, or funeral establishment, the agent shall review the  
6 inspection reports filed with the commission on the establishment.  
7 During the inspection, the agent shall determine whether previously  
8 identified problems have been corrected and whether a pattern of  
9 violations exists. The commission shall consider the information  
10 from the inspection reports in determining whether a penalty should  
11 be imposed against an establishment.

12 SECTION 11. Subchapter D, Chapter 651, Occupations Code, is  
13 amended by adding Section 651.1571 to read as follows:

14 Sec. 651.1571. INSPECTION REQUIREMENTS FOR CERTAIN  
15 CEMETERIES; EXCEPTION FOR PERPETUAL CARE CEMETERIES. (a) This  
16 section and Section 651.157 do not apply to perpetual care  
17 cemeteries.

18 (b) Except as provided by Section 651.157(b):

19 (1) a cemetery may not be inspected unless:

20 (A) an interment has occurred in the cemetery  
21 within the two years preceding the inspection; or

22 (B) the commission has received a complaint about  
23 the cemetery; and

24 (2) the commission shall give lower priority to an  
25 inspection of a cemetery than to an inspection of a crematory or  
26 funeral establishment.

27 SECTION 12. Section 651.164, Occupations Code, is amended

1 to read as follows:

2           Sec. 651.164. LICENSE [~~OR REGISTRATION~~] EXPIRATION. The  
3 commission by rule may adopt a system under which licenses [~~or~~  
4 ~~registrations~~] expire on various dates during the year. For the  
5 year in which the license [~~or registration~~] expiration date is  
6 changed, the commission shall prorate license [~~or registration~~]  
7 fees on a monthly basis so that each license holder [~~or registrant~~]  
8 pays only that portion of the license [~~or registration~~] fee that is  
9 allocable to the number of months during which the license [~~or~~  
10 ~~registration~~] is valid. On renewal of the license [~~or~~  
11 ~~registration~~] on the new expiration date, the total license [~~or~~  
12 ~~registration~~] renewal fee is payable.

13           SECTION 13. Subchapter D, Chapter 651, Occupations Code, is  
14 amended by adding Sections 651.166 and 651.167 to read as follows:

15           Sec. 651.166. USE OF TECHNOLOGY. The commission shall  
16 develop and implement a policy requiring the executive director and  
17 commission employees to research and propose appropriate  
18 technological solutions to improve the commission's ability to  
19 perform its functions. The technological solutions must:

20                   (1) ensure that the public is able to easily find  
21 information about the commission on the Internet;

22                   (2) ensure that persons who want to use the  
23 commission's services are able to:

24                           (A) interact with the commission through the  
25 Internet; and

26                           (B) access any service that can be provided  
27 effectively through the Internet; and

1           (3) be cost-effective and developed through the  
2 commission's planning processes.

3           Sec. 651.167. NEGOTIATED RULEMAKING AND ALTERNATIVE  
4 DISPUTE RESOLUTION PROCEDURES. (a) The commission shall develop  
5 and implement a policy to encourage the use of:

6           (1) negotiated rulemaking procedures under Chapter  
7 2008, Government Code, for the adoption of commission rules; and

8           (2) appropriate alternative dispute resolution  
9 procedures under Chapter 2009, Government Code, to assist in the  
10 resolution of internal and external disputes under the commission's  
11 jurisdiction.

12           (b) The commission's procedures relating to alternative  
13 dispute resolution must conform, to the extent possible, to any  
14 model guidelines issued by the State Office of Administrative  
15 Hearings for the use of alternative dispute resolution by state  
16 agencies.

17           (c) The commission shall designate a trained person to:

18           (1) coordinate the implementation of the policy  
19 adopted under Subsection (a);

20           (2) serve as a resource for any training needed to  
21 implement the procedures for negotiated rulemaking or alternative  
22 dispute resolution; and

23           (3) collect data concerning the effectiveness of  
24 those procedures, as implemented by the commission.

25           SECTION 14. Sections 651.202(a) and (b), Occupations Code,  
26 are amended to read as follows:

27           (a) The commission by rule shall establish methods by which

1 consumers and service recipients are notified of the name, mailing  
2 address, and telephone number of the commission for the purpose of  
3 directing complaints to the commission. The commission may provide  
4 for that notice:

5 (1) on each license [~~or registration~~] form,  
6 application, or written contract for services of a person regulated  
7 under this chapter;

8 (2) on a sign prominently displayed in the place of  
9 business of each person regulated under this chapter; or

10 (3) in a bill for service provided by a person  
11 regulated under this chapter.

12 (b) The commission shall adopt rules concerning a complaint  
13 filed under this section. The rules adopted under this subsection  
14 must:

15 (1) establish procedures regarding the receipt,  
16 investigation, and disposition of complaints;

17 (2) allow for an informal hearing process;

18 (3) establish a formal hearing process;

19 (4) ensure that the person who filed the complaint has  
20 an opportunity to explain the allegations made in the complaint;

21 (5) ensure that the license holder [~~or registrant~~] who  
22 is the subject of the complaint has an opportunity to be heard  
23 regarding the complaint; and

24 (6) establish procedures by which a commission  
25 employee may dismiss a complaint, subject to approval by the  
26 executive director or the executive director's designee, if the  
27 investigation does not reveal a violation.



1 SECTION 15. Section 651.2595(d), Occupations Code, is  
2 amended to read as follows:

3 (d) The commission shall approve or deny a provisional  
4 license holder's application for a license not later than the  
5 second anniversary of [~~180th day after~~] the date on which the  
6 provisional license is issued. The commission may extend the  
7 two-year [~~180-day~~] period if the results of an examination have not  
8 been received by the commission before the end of that period.

9 SECTION 16. Section 651.261, Occupations Code, is amended  
10 to read as follows:

11 Sec. 651.261. POSTING OF LICENSE. A license holder shall  
12 conspicuously display the holder's license in each place of  
13 business at which the license holder practices [~~funeral directing~~  
14 ~~or embalming~~].

15 SECTION 17. Sections 651.267(a) and (d), Occupations Code,  
16 are amended to read as follows:

17 (a) On application, the commission may reissue a [~~funeral~~  
18 ~~director's or embalmer's~~] license issued under this subchapter to a  
19 person whose license has been suspended or revoked. An application  
20 to reissue a license may not be made before the first anniversary of  
21 the date of the suspension or revocation.

22 (d) A license that has been revoked or suspended for a  
23 period of five years or more may be reinstated only after the  
24 applicant passes the applicable [~~written embalming or funeral~~  
25 ~~directing~~] examination.

26 SECTION 18. Sections 651.302(a) and (b), Occupations Code,  
27 are amended to read as follows:

1 (a) The commission shall issue a provisional license to  
2 practice funeral directing to an applicant who:

3 (1) is at least 18 years of age;

4 (2) has completed the educational requirements of  
5 Section 651.253 or is enrolled in an accredited school or college of  
6 mortuary science;

7 (3) is employed by a funeral director to learn funeral  
8 directing or embalming under the instruction and supervision of the  
9 funeral director [~~takes the written examination given by the~~  
10 ~~commission~~];

11 (4) files an application for a provisional license on  
12 a form provided by the commission and verified under oath by the  
13 applicant; and

14 (5) pays any required application or license fee.

15 (b) The commission shall issue a provisional license to  
16 practice embalming to an applicant who:

17 (1) is at least 18 years of age;

18 (2) has completed the educational requirements of  
19 Section 651.253 or is enrolled in an accredited school or college of  
20 mortuary science;

21 (3) [~~takes the written examination given by the~~  
22 ~~commission~~];

23 [~~(4)~~] files an application for a provisional license;

24 (4) [~~(5)~~] pays any required application or license  
25 fee; and

26 (5) [~~(6)~~] complies with the requirements of this  
27 chapter and of the commission.

1 SECTION 19. Section 651.303(b), Occupations Code, is  
2 amended to read as follows:

3 (b) The commission by rule shall define the terms of  
4 employment of a provisional license holder. The terms of  
5 employment:

6 (1) must include service by the provisional license  
7 holder:

8 (A) of at least 17 hours a week or 73 hours a  
9 month; and

10 (B) under actual working conditions and under the  
11 personal supervision of a funeral director or embalmer; and

12 (2) may not require more than 17 hours a week or 73  
13 hours a month.

14 SECTION 20. Subchapter G, Chapter 651, Occupations Code, is  
15 amended by adding Section 651.3035 to read as follows:

16 Sec. 651.3035. MORTUARY COLLEGE CREDIT FOR PROVISIONAL  
17 LICENSE PROGRAM. (a) A case completed under Section 651.303(d) may  
18 serve as credit for both mortuary school or college and the  
19 provisional license holder program.

20 (b) A mortuary school or college may designate a funeral  
21 director or embalmer who is supervising a provisional license  
22 holder under Section 651.303 as a clinical instructor for the  
23 provisional license holder.

24 SECTION 21. Section 651.304(b), Occupations Code, is  
25 amended to read as follows:

26 (b) A provisional license holder shall report to the  
27 commission monthly. The report must:

1 (1) be made not later than the 10th day after the end  
2 of the month;

3 (2) identify each case that the provisional license  
4 holder:

5 (A) assisted in handling during that month if the  
6 provisional license holder is a funeral director applicant; or

7 (B) handled or assisted in handling during that  
8 month if the provisional license holder is an embalmer applicant;

9 (3) list any credit earned for mortuary school or  
10 college under Section 651.3035; and

11 (4) [~~3~~] be certified by the funeral director or  
12 embalmer under whom the provisional license holder performed the  
13 work.

14 SECTION 22. The heading to Subchapter H, Chapter 651,  
15 Occupations Code, is amended to read as follows:

16 SUBCHAPTER H. LICENSE REQUIREMENTS: CEMETERY, FUNERAL,  
17 [ESTABLISHMENTS] AND COMMERCIAL EMBALMER ESTABLISHMENTS

18 SECTION 23. Subchapter H, Chapter 651, Occupations Code, is  
19 amended by adding Section 651.353 to read as follows:

20 Sec. 651.353. CEMETERY ESTABLISHMENT REQUIREMENTS. (a) A  
21 cemetery may not conduct a cemetery business unless the facility is  
22 licensed by the commission.

23 (b) This chapter does not require a cemetery to be owned by a  
24 person licensed under this chapter.

25 (c) To obtain an initial cemetery license, an applicant must  
26 apply for a license and pay the licensing fee. The commission shall  
27 issue an initial cemetery license on determining that the applicant

1 satisfies the requirements of this chapter.

2 (d) This section does not apply to:

3 (1) a family, fraternal, or community cemetery that is  
4 not larger than 10 acres;

5 (2) an unincorporated association of plot owners not  
6 operated for profit;

7 (3) a church, a religious society or denomination, or  
8 an entity solely administering the temporalities of a church or  
9 religious society or denomination; or

10 (4) a public cemetery owned by this state, a county, or  
11 a municipality.

12 SECTION 24. Section 651.354, Occupations Code, is amended  
13 to read as follows:

14 Sec. 651.354. RENEWAL OF CEMETERY OR FUNERAL ESTABLISHMENT  
15 LICENSE. (a) The commission shall mail written notice to a  
16 cemetery or funeral establishment of the impending expiration of  
17 the [~~funeral~~] establishment's license not later than the 30th day  
18 before the expiration date of the license. Except as provided by  
19 Subsection (d), the [~~The~~] notice must state that:

20 (1) to renew the license, the cemetery or funeral  
21 establishment must pay the renewal fee not later than September 30;  
22 and

23 (2) the license is automatically renewed on receipt of  
24 the renewal fee.

25 (b) A cemetery or funeral establishment that fails to pay  
26 the license renewal fee by the due date is subject to a late payment  
27 penalty equal to the amount charged for the license renewal fee.

1 (c) If the license is expired for longer than 30 days, the  
2 cemetery or funeral establishment may not renew the license and may  
3 not operate as a cemetery or funeral establishment until the  
4 establishment is issued a new license in the manner provided for  
5 issuing an original license.

6 (d) To renew a license for a perpetual care cemetery, the  
7 cemetery must submit a renewal on a form prescribed by the  
8 commission. The license is renewed on receipt of the form by the  
9 commission.

10 SECTION 25. Section 651.4065(c), Occupations Code, is  
11 amended to read as follows:

12 (c) The operator of a [~~registrant for the~~] cemetery [~~or~~  
13 ~~crematory~~] shall sign a [~~the~~] purchase agreement for a cemetery.

14 SECTION 26. Section 651.455(a), Occupations Code, is  
15 amended to read as follows:

16 (a) A person violates this chapter if the person uses a  
17 statement that misleads or deceives the public, including a  
18 fraudulent statement or any other type of a false or misleading  
19 statement regarding:

20 (1) a legal, religious, or cemetery requirement for  
21 funeral merchandise or funeral, cemetery, or crematory services;

22 (2) the preservative qualities of funeral merchandise  
23 or funeral, cemetery, or crematory services in preventing or  
24 substantially delaying natural decomposition of human remains;

25 (3) the airtight or watertight properties of a casket  
26 or outer enclosure; [~~or~~]

27 (4) the licenses [~~or registrations~~] held by the

1 personnel in the operation of the cemetery, crematory, or funeral  
2 establishment; or

3 (5) an activity regulated under this chapter,  
4 including the sale of funeral-related goods or services.

5 SECTION 27. Section 651.456, Occupations Code, is amended  
6 to read as follows:

7 Sec. 651.456. UNETHICAL CONDUCT REGARDING CUSTODY OF DEAD  
8 HUMAN BODY. A person violates this chapter if the person:

9 (1) takes custody of a dead human body without the  
10 permission of:

11 (A) the person or the agent of the person  
12 authorized to make funeral arrangements for the deceased; or

13 (B) a medical examiner or a justice of the peace  
14 who has jurisdiction over the body under Articles 49.02-49.05, Code  
15 of Criminal Procedure; [~~or~~]

16 (2) refuses to promptly surrender a dead human body to  
17 a person or agent authorized to make funeral arrangements for the  
18 deceased; or

19 (3) violates any state law governing the  
20 transportation, storage, refrigeration, inurnment, interment, or  
21 disinterment of a dead human body.

22 SECTION 28. Section 651.459(a), Occupations Code, is  
23 amended to read as follows:

24 (a) A person violates this chapter if the person:

25 (1) wilfully makes a false statement on:

26 (A) a death certificate, including forgery of a  
27 physician's signature; or

1            (B) a document required by this chapter or a rule  
2 adopted under this chapter;

3            (2) engages in fraudulent, unprofessional, or  
4 deceptive conduct in providing funeral services or merchandise to a  
5 customer;

6            (3) engages in dishonest conduct, wilful conduct, or  
7 negligence in the practice of embalming or funeral directing that  
8 is likely to or does deceive, defraud, or otherwise injure the  
9 public;

10           (4) causes the execution of a document by the use of  
11 fraud, deceit, or misrepresentation;

12           (5) directly or indirectly employs a person to solicit  
13 individuals or institutions by whose influence dead human bodies  
14 may be turned over to a particular funeral director, embalmer, or  
15 funeral establishment;

16           (6) misappropriates funds held by a license holder, a  
17 funeral establishment, an employee or agent of the funeral  
18 establishment, or another depository, that create an obligation to  
19 provide a funeral service or merchandise, including retaining for  
20 an unreasonable time excess funds paid by or on behalf of the  
21 customer for which the customer is entitled to a refund; or

22           (7) performs acts of funeral directing or embalming  
23 that are outside the licensed scope and authority of the license  
24 holder, or performs acts of funeral directing or embalming in a  
25 capacity other than that of an employee, agent, subcontractor, or  
26 assignee of a licensed funeral establishment that has contracted to  
27 perform those acts.



1 SECTION 29. Subchapter K, Chapter 651, Occupations Code, is  
2 amended by adding Section 651.5026 to read as follows:

3 Sec. 651.5026. TEMPORARY LICENSE SUSPENSION OR  
4 RESTRICTION; DISCIPLINARY PANEL. (a) The presiding officer of the  
5 commission shall appoint a three-member disciplinary panel  
6 composed of two funeral industry members and one public member of  
7 the commission to determine whether a funeral director's or  
8 embalmer's license should be temporarily suspended or restricted.

9 (b) Chapter 551, Government Code, does not prohibit the  
10 disciplinary panel from holding a meeting by telephone conference  
11 call if convening the panel at one location is inconvenient for any  
12 member of the panel.

13 (c) The disciplinary panel shall temporarily suspend or  
14 restrict the license if the panel determines from the information  
15 presented to it with or without a hearing, that the license holder  
16 has violated this chapter or a rule adopted under this chapter and  
17 would, by the license holder's continued unrestricted activity,  
18 constitute a continuing threat to the public welfare.

19 (d) The suspension or restriction may be without notice or  
20 hearing if:

21 (1) the commission immediately provides notice of the  
22 suspension or restriction to the funeral director or embalmer;

23 (2) proceedings for a hearing under Section 651.506  
24 are initiated simultaneously with the suspension or restriction;  
25 and

26 (3) the hearing is held as required by Chapter 2001,  
27 Government Code, and this chapter not later than 48 hours after the

1 suspension or restriction.

2 (e) If the disciplinary panel affirms the temporary  
3 suspension or restriction at a hearing, the commission shall  
4 schedule an informal compliance meeting that meets the requirements  
5 of Section 2001.054(c), Government Code, and this chapter to be  
6 held as soon as practicable unless:

7 (1) it is evident from the determination of the panel  
8 that the funeral director or embalmer would be unable to show  
9 compliance at the informal meeting regarding the issues that are  
10 the basis for the temporary suspension or restriction; or

11 (2) an informal meeting has already been held  
12 regarding the issues that are the basis for the temporary  
13 suspension or restriction.

14 (f) If the funeral director or embalmer is unable to show  
15 compliance at the informal meeting under Subsection (e), the  
16 commission shall file a formal complaint under this chapter as soon  
17 as practicable.

18 (g) If the disciplinary panel does not temporarily suspend  
19 or restrict the license after considering the information presented  
20 to it at a hearing under Subsection (c), the facts that were the  
21 basis for the temporary suspension or restriction may not be the  
22 sole basis of another proceeding to temporarily suspend or restrict  
23 the funeral director's or embalmer's license. The commission may  
24 use those same facts in a later investigation to obtain new  
25 information that may be the basis for the temporary suspension or  
26 restriction of a funeral director's or embalmer's license,  
27 including facts presented to the disciplinary panel and facts known

1 to the commission at the time evidence was presented to the  
2 disciplinary panel.

3 SECTION 30. The heading to Subchapter N, Chapter 651,  
4 Occupations Code, is amended to read as follows:

5 SUBCHAPTER N. LICENSING [~~REGISTRATION~~] REQUIREMENTS: [~~CEMETERIES~~  
6 ~~AND~~] CREMATORIES

7 SECTION 31. Section 651.652(a), Occupations Code, is  
8 amended to read as follows:

9 (a) This subchapter applies only to a [~~cemetery or~~]  
10 crematory that sells goods or services related to the burial or  
11 final disposition of a body.

12 SECTION 32. Section 711.004(f), Health and Safety Code, is  
13 amended to read as follows:

14 (f) Except as is authorized for a justice of the peace  
15 acting as coroner or medical examiner under Chapter 49, Code of  
16 Criminal Procedure, remains may not be removed from a cemetery  
17 except on the written order of the state registrar or the state  
18 registrar's designee. The cemetery organization shall keep a  
19 duplicate copy of the order as part of its records. The Texas  
20 Funeral Service Commission [~~Board of Health~~] may adopt rules to  
21 implement this subsection.

22 SECTION 33. Section 711.007(b), Health and Safety Code, is  
23 amended to read as follows:

24 (b) The proceeding may be brought by:

25 (1) the attorney general;

26 (2) the Banking Commissioner of Texas;

27 (3) the governing body of a municipality with a

1 population of more than 25,000, if the cemetery is located in the  
2 municipality or not farther than five miles from the municipality;

3 (4) the district attorney of the county, if the  
4 cemetery is located in an area of the county not described by  
5 Subdivision (3);

6 (5) the owner of a residence:

7 (A) in or near the municipality in which the  
8 cemetery is located; or

9 (B) in the area proscribed for the location of a  
10 cemetery by Section 711.008;

11 (6) the Texas Funeral Service Commission; or

12 (7) [~~(6)~~] the owner of a plot in the cemetery.

13 SECTION 34. Subchapter A, Chapter 711, Health and Safety  
14 Code, is amended by adding Section 711.012 to read as follows:

15 Sec. 711.012. RULES. (a) The Finance Commission of Texas  
16 may adopt rules to enforce and administer Sections 711.003,  
17 711.008, 711.021-711.024, 711.032-711.035, 711.038,  
18 711.040-711.042, 711.052, 711.061, and 711.062 relating to  
19 perpetual care cemeteries.

20 (b) The Texas Funeral Service Commission may adopt rules,  
21 establish procedures, and prescribe forms to enforce and administer  
22 Sections 711.003, 711.008, 711.010, 711.011, 711.021-711.035,  
23 711.038, 711.041, 711.042, 711.061, and 711.062 relating to  
24 cemeteries that are not perpetual care cemeteries.

25 SECTION 35. Subchapter D, Chapter 711, Health and Safety  
26 Code, is amended by adding Sections 711.053-711.056 to read as  
27 follows:

1       Sec. 711.053. DEFINITION. In this subchapter,  
2 "commissioner" means the banking commissioner of Texas.

3       Sec. 711.054. ENFORCEMENT BY FINANCE COMMISSION OF TEXAS.  
4 The Finance Commission of Texas may use remedies available under  
5 Chapter 712 to enforce a section listed under Section 711.012(a)  
6 relating to perpetual care cemeteries.

7       Sec. 711.055. ENFORCEMENT BY COMMISSIONER. (a) Chapter  
8 2001, Government Code, applies to a proceeding under this section.

9       (b) After notice and opportunity for hearing, the  
10 commissioner may impose an administrative penalty on a person who:

11       (1) violates this chapter or a final order of the  
12 commissioner or rule of the Finance Commission of Texas and does not  
13 correct the violation before the 31st day after the date the person  
14 receives written notice of the violation from the Texas Department  
15 of Banking; or

16       (2) engages in a pattern of violations, as determined  
17 by the commissioner.

18       (c) The amount of the penalty for each violation may not  
19 exceed \$1,000 for each day the violation occurs.

20       (d) In determining the amount of the penalty, the  
21 commissioner shall consider the seriousness of the violation, the  
22 person's history of violations, and the person's good faith in  
23 attempting to comply with this chapter. The commissioner may  
24 collect the penalty in the same manner that a money judgment is  
25 enforced in district court.

26       (e) In addition to any penalty that may be imposed under  
27 Subsection (b), the commissioner may bring a civil action against a

1 person to enjoin a violation described in Subsection (b) that has  
2 not been corrected within 30 days after receipt by the person of  
3 written notice of the violation from the commissioner. The civil  
4 action may be brought in the district court of the county in which  
5 the cemetery is operated.

6 (f) The commissioner may issue an order to cease and desist  
7 if a violation described in Subsection (b) has not been corrected  
8 within 30 days after receipt by the person of written notice of the  
9 violation from the commissioner. Any order proposed under this  
10 subsection shall be served on the person, shall state the grounds  
11 for the proposed order with reasonable certainty, and shall state  
12 the proposed effective date, which may not be less than 15 days  
13 after receipt by the person. Unless the person requests a hearing  
14 within 15 days after the receipt, the order is effective as  
15 proposed.

16 Sec. 711.056. PATTERN OF WILFUL DISREGARD. (a) If after a  
17 hearing conducted as provided by Chapter 2001, Government Code, the  
18 trier of fact finds that a violation of this chapter or a rule of the  
19 Finance Commission of Texas establishes a pattern of wilful  
20 disregard for the requirements of this chapter or rules of the  
21 finance commission, the trier of fact shall recommend to the  
22 commissioner that the maximum administrative penalty permitted  
23 under Section 711.055 be imposed on the person committing the  
24 violation or that the commissioner cancel or not renew the person's  
25 permit under Chapter 154, Finance Code, if the person holds such a  
26 permit.

27 (b) For the purposes of this section, violations corrected

1 as provided by Section 711.055 may be included in determining  
2 whether a pattern of wilful disregard for the requirements of this  
3 chapter or rules of the finance commission exists.

4 SECTION 36. Section 712.002, Health and Safety Code, is  
5 amended to read as follows:

6 Sec. 712.002. EXEMPTIONS FROM CHAPTER. This chapter does  
7 not apply to:

8 (1) a family, fraternal, or community cemetery that is  
9 not larger than 10 acres;

10 (2) an unincorporated association of plot owners not  
11 operated for profit;

12 (3) ~~[a nonprofit corporation organized by plot owners,~~  
13 ~~or~~

14 [~~(4)~~] a church, a religious society or denomination,  
15 or an entity solely administering the temporalities of a church or  
16 religious society or denomination; or

17 (4) a public cemetery owned by this state, a county, or  
18 a municipality.

19 SECTION 37. Section 712.008, Health and Safety Code, is  
20 amended to read as follows:

21 Sec. 712.008. RULES. (a) The Finance Commission of Texas  
22 may adopt rules to enforce and administer this chapter, including  
23 rules establishing fees to defray the costs of enforcing and  
24 administering this chapter.

25 (b) The Finance Commission of Texas shall adopt rules  
26 establishing reasonable standards for:

27 (1) timely placement of burial markers or monuments in

1 a perpetual care cemetery; and

2 (2) timely response to consumer complaints made to a  
3 corporation that operates a perpetual care cemetery.

4 SECTION 38. Section 712.025, Health and Safety Code, is  
5 amended to read as follows:

6 Sec. 712.025. USE OF FUND INCOME. Fund income [~~may be~~  
7 ~~applied in the manner the directors of a corporation determine to be~~  
8 ~~for the best interest of the corporation's perpetual care cemetery~~  
9 ~~and~~] may be used only to provide [~~for~~] the perpetual care described  
10 by the [~~resolution, bylaw, or other action or~~] instrument that  
11 established the fund, including the general care and maintenance of  
12 the property entitled to perpetual care in the perpetual care  
13 cemetery.

14 SECTION 39. Sections 712.028(a) and (c), Health and Safety  
15 Code, are amended to read as follows:

16 (a) A corporation shall deposit in its fund an amount that  
17 is at least:

18 (1) the greater of:

19 (A) \$1.75 [~~\$1.50~~] a square foot of ground area  
20 conveyed as perpetual care property; or

21 (B) 15 [~~10~~] percent of the total purchase price  
22 of that ground area;

23 (2) the greater of:

24 (A) \$105 [~~\$90~~] for each crypt interment right for  
25 mausoleum interment or lawn crypt interment conveyed as perpetual  
26 care property, or \$60 [~~\$50~~] for each crypt interment right if that  
27 crypt is accessible only through another crypt; or



1 (B) seven [~~five~~] percent of the total purchase  
2 price of that crypt interment right; and

3 (3) the greater of:

4 (A) \$35 [~~\$30~~] for each niche interment right for  
5 columbarium interment conveyed; or

6 (B) 15 [~~10~~] percent of the total purchase price  
7 of that niche interment right.

8 (c) If a plot owner exchanges a plot for another plot in a  
9 corporation's perpetual care cemetery, the amount to be deposited  
10 in the corporation's fund in respect of the plot received by the  
11 plot owner in the exchange may be reduced by the amount deposited in  
12 the fund in respect of the plot contributed by the plot owner in the  
13 exchange. The amount required to be deposited with respect to an  
14 exchanged plot is the amount required at the time the plot owner  
15 originally contracted to purchase the plot.

16 SECTION 40. Section 715.003, Health and Safety Code, is  
17 amended to read as follows:

18 Sec. 715.003. PARTIES TO ACTION. An action commenced under  
19 this chapter shall be brought by the incorporators of the nonprofit  
20 corporation on behalf of the nonprofit corporation. The necessary  
21 parties to the action on which citation shall be served under  
22 Section 715.006 are:

23 (1) the record owners of the real property comprising  
24 the historic cemetery;

25 (2) the owners of plots in the cemetery, who may be  
26 designated as a class in the petition; [~~and~~]

27 (3) the Texas Historical Commission; and

1           (4) the Texas Funeral Service Commission.

2           SECTION 41. Section 715.006(a), Health and Safety Code, is  
3 amended to read as follows:

4           (a) Before the 31st day after the date an action is  
5 commenced by a nonprofit corporation under this chapter, the  
6 nonprofit corporation shall cause citation to be issued and served  
7 by certified mail, return receipt requested, on:

8                 (1) the record owners of the real property comprising  
9 the cemetery at their last known addresses;

10                (2) the owners of plots in the cemetery at their last  
11 known addresses;

12                (3) the Texas Historical Commission at its office in  
13 Austin, Texas;

14                (4) the Texas Funeral Service Commission; and

15                (5) [~~4~~] the county auditor of the county in which  
16 the cemetery is located.

17           SECTION 42. The following laws are repealed:

18                 (1) Section 651.1575, Occupations Code;

19                 (2) Section 651.302(c), Occupations Code;

20                 (3) Section 651.455(b), Occupations Code; and

21                 (4) Section 651.506(j), Occupations Code.

22           SECTION 43. On September 1, 2003:

23                 (1) all functions and activities related to Chapter  
24 711, Health and Safety Code, performed by the Texas Department of  
25 Health immediately before that date are transferred to the Texas  
26 Funeral Service Commission;

27                 (2) a rule or form of the Texas Department of Health

1 related to Chapter 711, Health and Safety Code, is a rule or form of  
2 the Texas Funeral Service Commission and remains in effect until  
3 amended or replaced by that commission;

4 (3) a reference in law or an administrative rule to the  
5 Texas Department of Health that relates to Chapter 711, Health and  
6 Safety Code, means the Texas Funeral Service Commission; and

7 (4) a complaint, investigation, or other proceeding  
8 before the Texas Department of Health that is related to Chapter  
9 711, Health and Safety Code, is transferred without change in  
10 status to the Texas Funeral Service Commission, and the Texas  
11 Funeral Service Commission assumes, as appropriate and without a  
12 change in status, the position of the Texas Department of Health in  
13 an action or proceeding to which the Texas Department of Health is a  
14 party.

15 SECTION 44. On March 1, 2004, Sections 651.652(b), 651.653,  
16 651.654, and 651.655, Occupations Code, are repealed.

17 SECTION 45. A cemetery is not required to hold a license  
18 under Chapter 651, Occupations Code, as amended by this Act, until  
19 March 1, 2004.

20 SECTION 46. The change in law made by this Act to Section  
21 712.028, Health and Safety Code, applies only to a contract for the  
22 purchase of a plot in a perpetual care cemetery entered into, or the  
23 exchange of a plot in a perpetual care cemetery made, on or after  
24 the effective date of this Act. A contract for the purchase of a  
25 plot in a perpetual care cemetery entered into, or the exchange of a  
26 plot in a perpetual care cemetery made, before the effective date of  
27 this Act is governed by the law as it existed immediately before

1 that effective date, and that law is continued in effect for that  
2 purpose.

3 SECTION 47. This Act takes effect September 1, 2003.

H.B. No. 1538

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President of the Senate

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Speaker of the House

I certify that H.B. No. 1538 was passed by the House on May 6, 2003, by a non-record vote; that the House refused to concur in Senate amendments to H.B. No. 1538 on May 30, 2003, and requested the appointment of a conference committee to consider the differences between the two houses; and that the House adopted the conference committee report on H.B. No. 1538 on June 1, 2003, by a non-record vote.

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Chief Clerk of the House

H.B. No. 1538

I certify that H.B. No. 1538 was passed by the Senate, with amendments, on May 28, 2003, by a viva-voce vote; at the request of the House, the Senate appointed a conference committee to consider the differences between the two houses; and that the Senate adopted the conference committee report on H.B. No. 1538 on June 1, 2003, by a viva-voce vote.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor