

By: Chisum, Gallego, Solomons, Dunnam

H.B. No. 1538

Substitute the following for H.B. No. 1538:

By: McReynolds

C.S.H.B. No. 1538

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the continuation and functions of the Texas Funeral
3 Service Commission, including certain functions transferred to the
4 commission from the Texas Department of Health, and the powers and
5 duties of the Texas Finance Commission and the banking commissioner
6 of Texas regarding cemeteries; providing administrative and civil
7 penalties.

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

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

11 (12-a) "Perpetual care cemetery" means a cemetery
12 regulated under Chapter 712, Health and Safety Code.

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

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

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

22 (a) This chapter does not affect the authority of the Texas
23 Department of Banking to enforce Chapter 154, Finance Code, or to
24 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.

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

10 SECTION 5. Sections 651.057(a) and (b), Occupations Code,
11 are amended to read as follows:

12 (a) The governor shall designate one [~~public~~] member of the
13 commission as the presiding officer of the commission to serve in
14 that capacity at the pleasure of the governor.

15 (b) After 30 days' written notice is given to the
16 commissioners, the commission shall elect from its [~~public~~] members
17 an assistant presiding officer. The assistant presiding officer
18 serves in that capacity for one year.

19 SECTION 6. Sections 651.151(a) and (b), Occupations Code,
20 are amended to read as follows:

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

25 (b) The commission shall examine each applicant for a
26 crematory operator's license, funeral director's license,
27 embalmer's license, or provisional license and shall issue the

1 appropriate license to a person who meets the licensing
2 requirements.

3 SECTION 7. Section 651.152, Occupations Code, is amended to
4 read as follows:

5 Sec. 651.152. RULES; PROCEDURES; FORMS. The commission
6 shall [~~may~~] adopt rules, establish procedures, and prescribe forms
7 necessary to administer and enforce this chapter and Chapters 714
8 and 715, Health and Safety Code.

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

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

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

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

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

26 (1) the crematory operator's, funeral director's, and
27 embalmer's application fee, license fee, duplicate license fee, and

1 reciprocal license fee; and

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

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

7 SECTION 10. Section 651.157, Occupations Code, is amended
8 to read as follows:

9 Sec. 651.157. INSPECTION OF CEMETERY, CREMATORY, OR FUNERAL
10 ESTABLISHMENT. (a) Except as provided by Subsection (b), a
11 licensed cemetery, crematory, or funeral establishment shall be
12 inspected at least once every two years by an agent of the
13 commission or by an agent of the state or a political subdivision
14 authorized by the commission to make inspections on its behalf.

15 (b) If the commission finds a violation of this chapter or
16 of Chapter 193, ~~[or]~~ 361, 711, 714, or 715, Health and Safety Code,
17 the commission shall inspect the cemetery, crematory, or funeral
18 establishment annually until the commission determines that the
19 establishment is free of violations.

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

22 (d) The commission by rule shall establish:

23 (1) procedures for the inspection of a cemetery,
24 crematory, or funeral establishment required by this section; and

25 (2) criteria, including consideration of the
26 establishment's inspection and complaint history, regarding when
27 the commission should inspect an establishment based on the risk of

1 a violation at an establishment.

2 (e) A premises on which funeral directing, interment,
3 cremation, or embalming is practiced shall be open at all times to
4 inspection for any violation of this chapter or of Chapter 193 or
5 361, Health and Safety Code, by:

- 6 (1) an agent of the commission;
- 7 (2) an authorized agent of the state; or
- 8 (3) an authorized agent of the county or municipality
9 in which the premises is located.

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

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

20 Sec. 651.1571. INSPECTION REQUIREMENTS FOR CERTAIN
21 CEMETERIES; EXCEPTION FOR PERPETUAL CARE CEMETERIES. (a) This
22 section and Section 651.157 do not apply to perpetual care
23 cemeteries.

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

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

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

1 (B) the commission has received a complaint about
2 the cemetery; and

3 (2) the commission shall give lower priority to an
4 inspection of a cemetery than to an inspection of a crematory or
5 funeral establishment.

6 SECTION 12. Section 651.164, Occupations Code, is amended
7 to read as follows:

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

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

21 Sec. 651.166. USE OF TECHNOLOGY. The commission shall
22 develop and implement a policy requiring the executive director and
23 commission employees to research and propose appropriate
24 technological solutions to improve the commission's ability to
25 perform its functions. The technological solutions must:

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

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

3 (A) interact with the commission through the
4 Internet; and

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

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

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

12 (1) negotiated rulemaking procedures under Chapter
13 2008, Government Code, for the adoption of commission rules; and

14 (2) appropriate alternative dispute resolution
15 procedures under Chapter 2009, Government Code, to assist in the
16 resolution of internal and external disputes under the commission's
17 jurisdiction.

18 (b) The commission's procedures relating to alternative
19 dispute resolution must conform, to the extent possible, to any
20 model guidelines issued by the State Office of Administrative
21 Hearings for the use of alternative dispute resolution by state
22 agencies.

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

24 (1) coordinate the implementation of the policy
25 adopted under Subsection (a);

26 (2) serve as a resource for any training needed to
27 implement the procedures for negotiated rulemaking or alternative

1 dispute resolution; and

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

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

6 (a) The commission by rule shall establish methods by which
7 consumers and service recipients are notified of the name, mailing
8 address, and telephone number of the commission for the purpose of
9 directing complaints to the commission. The commission may provide
10 for that notice:

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

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

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

18 (b) The commission shall adopt rules concerning a complaint
19 filed under this section. The rules adopted under this subsection
20 must:

21 (1) establish procedures regarding the receipt,
22 investigation, and disposition of complaints;

23 (2) allow for an informal hearing process;

24 (3) establish a formal hearing process;

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

27 (5) ensure that the license holder [~~or registrant~~] who

1 is the subject of the complaint has an opportunity to be heard
2 regarding the complaint; and

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

7 SECTION 15. The heading to Subchapter F, Chapter 651,
8 Occupations Code, is amended to read as follows:

9 SUBCHAPTER F. LICENSE REQUIREMENTS: CREMATORY OPERATORS, FUNERAL
10 DIRECTORS, AND EMBALMERS

11 SECTION 16. Section 651.251, Occupations Code, is amended
12 by adding Subsection (c) to read as follows:

13 (c) Cremation may be performed only by a licensed crematory
14 operator. A person may not engage or profess to be engaged in the
15 business of cremation or hold the person out to the public as a
16 crematory operator unless the person is licensed as a crematory
17 operator.

18 SECTION 17. Section 651.252(a), Occupations Code, is
19 amended to read as follows:

20 (a) An applicant for a [~~funeral director's~~] license under
21 this subchapter [~~or an embalmer's license~~] must submit a written
22 license application to the commission and pay the application fee.

23 SECTION 18. Section 651.253, Occupations Code, is amended
24 by adding Subsections (c) and (d) to read as follows:

25 (c) To be eligible for a crematory operator's license, an
26 applicant must:

27 (1) be at least 18 years of age;

1 (2) have graduated from an accredited high school or
2 passed an examination prescribed by the Texas Education Agency; and

3 (3) have successfully completed the applicable
4 written examination.

5 (d) Subsection (a)(3) does not apply to an applicant for a
6 funeral director's license if the applicant has graduated from a
7 funeral director program approved by the commission. The
8 commission may not approve a program unless the program is at least
9 six months long.

10 SECTION 19. Section 651.254(a), Occupations Code, is
11 amended to read as follows:

12 (a) The examinations for a crematory operator's license,
13 funeral director's license, and ~~[an]~~ embalmer's license shall be
14 held at least annually. The examinations shall be given at the time
15 and place designated by the commission. The commission shall give
16 notice of the examinations.

17 SECTION 20. Subchapter F, Chapter 651, Occupations Code, is
18 amended by adding Section 651.2565 to read as follows:

19 Sec. 651.2565. EXAMINATIONS REQUIRED FOR CREMATORY
20 OPERATOR'S LICENSE. The commission shall administer or arrange for
21 the administration of:

22 (1) a written professionally prepared examination on:

23 (A) the art and technique of cremation;

24 (B) the signs of death;

25 (C) the manner by which death may be determined;

26 (D) sanitation and hygiene;

27 (E) cremation law; and

- 1 (F) business and professional ethics; and
2 (2) a written examination developed by the commission
3 or developed for the commission by contract on:
4 (A) laws applicable to vital statistics
5 pertaining to dead human bodies; and
6 (B) local and state rules and laws relating to
7 the transportation, care, and disposition of dead human bodies.

8 SECTION 21. Section 651.2595(d), Occupations Code, is
9 amended to read as follows:

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

16 SECTION 22. Section 651.261, Occupations Code, is amended
17 to read as follows:

18 Sec. 651.261. POSTING OF LICENSE. A license holder shall
19 conspicuously display the holder's license in each place of
20 business at which the license holder practices [~~funeral directing~~
21 ~~or embalming~~].

22 SECTION 23. Sections 651.267(a) and (d), Occupations Code,
23 are amended to read as follows:

24 (a) On application, the commission may reissue a [~~funeral~~
25 ~~director's or embalmer's~~] license issued under this subchapter to a
26 person whose license has been suspended or revoked. An application
27 to reissue a license may not be made before the first anniversary of

1 the date of the suspension or revocation.

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

6 SECTION 24. Sections 651.302(a) and (b), Occupations Code,
7 are amended to read as follows:

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

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

11 (2) has completed the educational requirements of
12 Section 651.253 or is enrolled in an accredited school or college of
13 mortuary science;

14 (3) is employed by a funeral director to learn funeral
15 directing or embalming under the instruction and supervision of the
16 funeral director [~~takes the written examination given by the~~
17 ~~commission~~];

18 (4) files an application for a provisional license on
19 a form provided by the commission and verified under oath by the
20 applicant; and

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

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

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

25 (2) has completed the educational requirements of
26 Section 651.253 or is enrolled in an accredited school or college of
27 mortuary science;

1 (3) [~~takes the written examination given by the~~
2 ~~commission,~~
3 [~~(4)~~] files an application for a provisional license;
4 (4) [~~(5)~~] pays any required application or license
5 fee; and
6 (5) [~~(6)~~] complies with the requirements of this
7 chapter and of the commission.

8 SECTION 25. Section 651.303(b), Occupations Code, is
9 amended to read as follows:

10 (b) The commission by rule shall define the terms of
11 employment of a provisional license holder. The terms of
12 employment:

13 (1) must include service by the provisional license
14 holder:

15 (A) of at least 17 hours a week or 73 hours a
16 month; and

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

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

21 SECTION 26. Subchapter G, Chapter 651, Occupations Code, is
22 amended by adding Section 651.3035 to read as follows:

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

27 (b) A mortuary school or college may designate a funeral

1 director or embalmer who is supervising a provisional license
2 holder under Section 651.303 as a clinical instructor for the
3 provisional license holder.

4 SECTION 27. Section 651.304(b), Occupations Code, is
5 amended to read as follows:

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

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

10 (2) identify each case that the provisional license
11 holder:

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

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

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

18 (4) [~~(3)~~] be certified by the funeral director or
19 embalmer under whom the provisional license holder performed the
20 work.

21 SECTION 28. The heading to Subchapter H, Chapter 651,
22 Occupations Code, is amended to read as follows:

23 SUBCHAPTER H. LICENSE REQUIREMENTS: CEMETERY, CREMATORY, FUNERAL,
24 [ESTABLISHMENTS] AND COMMERCIAL EMBALMER ESTABLISHMENTS

25 SECTION 29. Subchapter H, Chapter 651, Occupations Code, is
26 amended by adding Sections 651.353 and 651.3535 to read as follows:

27 Sec. 651.353. CEMETERY ESTABLISHMENT REQUIREMENTS. (a) A

1 cemetery may not conduct a cemetery business unless the facility is
2 licensed by the commission.

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

5 (c) To obtain an initial cemetery license, an applicant must
6 apply for a license and pay the licensing fee. The commission shall
7 issue an initial cemetery license on determining that the applicant
8 satisfies the requirements of this chapter.

9 (d) This section does not apply to:

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

12 (2) an unincorporated association of plot owners not
13 operated for profit;

14 (3) a church, a religious society or denomination, or
15 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 Sec. 651.3535. CREMATORY ESTABLISHMENT REQUIREMENTS. (a)
20 A crematory may not conduct a crematory business unless it is
21 licensed by the commission.

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

24 (c) To obtain an initial crematory license, an applicant
25 must apply for a license and pay the licensing fee. The commission
26 shall issue an initial crematory license on determining that the
27 applicant satisfies the requirements of this chapter.

1 (d) A crematory must meet the building and fire safety
2 standards and health ordinances of this state and of the
3 municipality in which the crematory is located.

4 (e) A crematory must be operated by a licensed crematory
5 operator.

6 SECTION 30. Section 651.354, Occupations Code, is amended
7 to read as follows:

8 Sec. 651.354. RENEWAL OF CEMETERY, CREMATORY, OR FUNERAL
9 ESTABLISHMENT LICENSE. (a) The commission shall mail written
10 notice to a crematory, crematory, or funeral establishment of the
11 impending expiration of the [~~funeral~~] establishment's license not
12 later than the 30th day before the expiration date of the license.
13 Except as provided by Subsection (d), the [The] notice must state
14 that:

15 (1) to renew the license, the crematory, crematory, or
16 funeral establishment must pay the renewal fee not later than
17 September 30; and

18 (2) the license is automatically renewed on receipt of
19 the renewal fee.

20 (b) A crematory, crematory, or funeral establishment that
21 fails to pay the license renewal fee by the due date is subject to a
22 late payment penalty equal to the amount charged for the license
23 renewal fee.

24 (c) If the license is expired for longer than 30 days, the
25 crematory, crematory, or funeral establishment may not renew the
26 license and may not operate as a crematory, crematory, or funeral
27 establishment until the establishment is issued a new license in

1 the manner provided for issuing an original license.

2 (d) To renew a license for a perpetual care cemetery, the
3 cemetery must submit a renewal on a form prescribed by the
4 commission. The license is renewed on receipt of the form by the
5 commission.

6 SECTION 31. Section 651.4065(c), Occupations Code, is
7 amended to read as follows:

8 (c) The operator of a [~~registrant for the~~] cemetery [~~or~~
9 ~~crematory~~] shall sign a [~~the~~] purchase agreement for a cemetery,
10 and a licensed crematory operator shall sign a purchase agreement
11 for a crematory.

12 SECTION 32. Section 651.455(a), Occupations Code, is
13 amended to read as follows:

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

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

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

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

25 (4) the licenses [~~or registrations~~] held by the
26 personnel in the operation of the cemetery, crematory, or funeral
27 establishment; or

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

3 SECTION 33. Section 651.456, Occupations Code, is amended
4 to read as follows:

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

7 (1) takes custody of a dead human body without the
8 permission of:

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

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

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

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

20 SECTION 34. Section 651.459(a), Occupations Code, is
21 amended to read as follows:

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

23 (1) wilfully makes a false statement on:

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

26 (B) a document required by this chapter or a rule
27 adopted under this chapter;

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

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

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

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

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

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

26 SECTION 35. Subchapter K, Chapter 651, Occupations Code, is
27 amended by adding Section 651.5026 to read as follows:

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

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

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

17 (d) The suspension or restriction may be without notice or
18 hearing if:

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

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

24 (3) the hearing is held as required by Chapter 2001,
25 Government Code, and this chapter not later than 48 hours after the
26 suspension or restriction.

27 (e) If the disciplinary panel affirms the temporary

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

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

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

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

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

1 SECTION 36. Subchapter M, Chapter 651, Occupations Code, is
2 amended by adding Section 651.603 to read as follows:

3 Sec. 651.603. VOLUNTARY DISCLOSURE; IMMUNITY. (a) Except
4 as provided by this section, a person who makes a voluntary
5 disclosure of a violation of this chapter is immune from an
6 administrative or civil penalty for the violation disclosed.

7 (b) A disclosure is voluntary only if:

8 (1) the disclosure was made promptly after knowledge
9 of the information disclosed is obtained by the person;

10 (2) the disclosure was made in writing by certified
11 mail to the commission with regard to the violation disclosed;

12 (3) an investigation of the violation was not
13 initiated or the violation was not independently detected by the
14 commission before the disclosure was made using certified mail;

15 (4) the disclosure arises out of a voluntary audit;

16 (5) the person who makes the disclosure initiates an
17 appropriate effort to achieve compliance, pursues that effort with
18 due diligence, and corrects the noncompliance within a reasonable
19 time;

20 (6) the person making the disclosure cooperates with
21 the commission in connection with an investigation of the issues
22 identified in the disclosure; and

23 (7) the violation did not result in injury or imminent
24 and substantial risk of serious injury to one or more persons at the
25 site or off-site substantial actual harm or imminent and
26 substantial risk of harm to persons or property.

27 (c) A disclosure is not voluntary for purposes of this

1 section if it is a report to the commission required solely by a
2 specific condition of an enforcement order or decree.

3 (d) The immunity established by Subsection (a) does not
4 apply and an administrative or civil penalty may be imposed under
5 applicable law if:

6 (1) the person who made the disclosure intentionally
7 or knowingly committed or was responsible within the meaning of
8 Section 7.02, Penal Code, for the commission of the disclosed
9 violation;

10 (2) the person who made the disclosure recklessly
11 committed or was responsible within the meaning of Section 7.02,
12 Penal Code, for the commission of the disclosed violation and the
13 violation resulted in substantial injury to one or more persons at
14 the site or off-site harm to persons or property;

15 (3) the offense was committed intentionally or
16 knowingly by a member of the person's management or an agent of the
17 person and the person's policies or lack of prevention systems
18 contributed materially to the occurrence of the violation;

19 (4) the offense was committed recklessly by a member
20 of the person's management or an agent of the person, the person's
21 policies or lack of prevention systems contributed materially to
22 the occurrence of the violation, and the violation resulted in
23 substantial injury to one or more persons at the site or off-site
24 harm to persons or property; or

25 (5) the violation has resulted in a substantial
26 economic benefit that gives the violator a clear advantage over its
27 business competitors.

1 (e) A penalty imposed under Subsection (d) should, to the
2 extent appropriate, be mitigated by factors such as:

- 3 (1) the voluntariness of the disclosure;
4 (2) efforts by the disclosing party to conduct audits;
5 (3) remediation;
6 (4) cooperation with government officials
7 investigating the disclosed violation; or
8 (5) other relevant considerations.

9 (f) In a civil or administrative enforcement action brought
10 against a person for a violation for which the person claims to have
11 made a voluntary disclosure, the person claiming the immunity has
12 the burden of establishing a prima facie case that the disclosure
13 was voluntary. After the person claiming the immunity establishes
14 a prima facie case of voluntary disclosure, other than a case in
15 which under Subsection (d) immunity does not apply, the enforcement
16 authority has the burden of rebutting the presumption by a
17 preponderance of the evidence or, in a criminal case, by proof
18 beyond a reasonable doubt.

19 (g) In order to receive immunity under this section, a
20 person conducting an audit under this section must give notice to
21 the commission of the fact that the person is planning to commence
22 the audit. The notice shall specify the facility or portion of the
23 facility to be audited, the anticipated time the audit will begin,
24 and the general scope of the audit. The notice may provide
25 notification of more than one scheduled audit at a time.

26 (h) The immunity under this section does not apply if a
27 court or administrative law judge finds that the person claiming

1 the immunity has:

2 (1) repeatedly or continuously committed significant
3 violations; and

4 (2) not attempted to bring the facility or operation
5 into compliance, so as to constitute a pattern of disregard of this
6 chapter.

7 (i) In order to be considered a "pattern" under Subsection
8 (h), a series of violations that were due to separate and distinct
9 events must have been committed within a three-year period at the
10 same facility or operation.

11 (j) A violation that has been voluntarily disclosed and to
12 which immunity applies must be identified in a compliance history
13 report as being voluntarily disclosed.

14 SECTION 37. Section 711.004(f), Health and Safety Code, is
15 amended to read as follows:

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

24 SECTION 38. Section 711.007(b), Health and Safety Code, is
25 amended to read as follows:

26 (b) The proceeding may be brought by:

27 (1) the attorney general;

1 (2) the Banking Commissioner of Texas;

2 (3) the governing body of a municipality with a
3 population of more than 25,000, if the cemetery is located in the
4 municipality or not farther than five miles from the municipality;

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

8 (5) the owner of a residence:

9 (A) in or near the municipality in which the
10 cemetery is located; or

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

13 (6) the Texas Funeral Service Commission; or

14 (7) [~~6~~] the owner of a plot in the cemetery.

15 SECTION 39. Subchapter A, Chapter 711, Health and Safety
16 Code, is amended by adding Section 711.012 to read as follows:

17 Sec. 711.012. RULES. (a) The Finance Commission of Texas
18 may adopt rules to enforce and administer Sections 711.003,
19 711.008, 711.021-711.024, 711.032-711.035, 711.038,
20 711.040-711.042, 711.052, 711.061, and 711.062 relating to
21 perpetual care cemeteries.

22 (b) The Texas Funeral Service Commission may adopt rules,
23 establish procedures, and prescribe forms to enforce and administer
24 Sections 711.003, 711.008, 711.010, 711.011, 711.021-711.035,
25 711.038, 711.041, 711.042, 711.061, and 711.062 relating to
26 cemeteries that are not perpetual care cemeteries.

27 SECTION 40. Subchapter D, Chapter 711, Health and Safety

1 Code, is amended by adding Sections 711.053-711.056 to read as
2 follows:

3 Sec. 711.053. DEFINITION. In this subchapter,
4 "commissioner" means the banking commissioner of Texas.

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

9 Sec. 711.055. ENFORCEMENT BY COMMISSIONER. (a) Chapter
10 2001, Government Code, applies to a proceeding under this section.

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

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

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

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

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

1 (e) In addition to any penalty that may be imposed under
2 Subsection (b), the commissioner may bring a civil action against a
3 person to enjoin a violation described in Subsection (b) that has
4 not been corrected within 30 days after receipt by the person of
5 written notice of the violation from the commissioner. The civil
6 action may be brought in the district court of the county in which
7 the cemetery is operated.

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

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

1 permit.

2 (b) For the purposes of this section, violations corrected
3 as provided by Section 711.055 may be included in determining
4 whether a pattern of wilful disregard for the requirements of this
5 chapter or rules of the finance commission exists.

6 SECTION 41. Section 712.002, Health and Safety Code, is
7 amended to read as follows:

8 Sec. 712.002. EXEMPTIONS FROM CHAPTER. This chapter does
9 not apply to:

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

12 (2) an unincorporated association of plot owners not
13 operated for profit;

14 (3) ~~[a nonprofit corporation organized by plot owners,~~
15 ~~or~~

16 [~~4~~] a church, a religious society or denomination,
17 or an entity solely administering the temporalities of a church or
18 religious society or denomination; or

19 (4) a public cemetery owned by this state, a county, or
20 a municipality.

21 SECTION 42. Section 715.003, Health and Safety Code, is
22 amended to read as follows:

23 Sec. 715.003. PARTIES TO ACTION. An action commenced under
24 this chapter shall be brought by the incorporators of the nonprofit
25 corporation on behalf of the nonprofit corporation. The necessary
26 parties to the action on which citation shall be served under
27 Section 715.006 are:

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

3 (2) the owners of plots in the cemetery, who may be
4 designated as a class in the petition; ~~and~~

5 (3) the Texas Historical Commission; and

6 (4) the Texas Funeral Service Commission.

7 SECTION 43. Section 715.006(a), Health and Safety Code, is
8 amended to read as follows:

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

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

15 (2) the owners of plots in the cemetery at their last
16 known addresses;

17 (3) the Texas Historical Commission at its office in
18 Austin, Texas;

19 (4) the Texas Funeral Service Commission; and

20 (5) [~~4~~] the county auditor of the county in which
21 the cemetery is located.

22 SECTION 44. The following laws are repealed:

23 (1) Section 651.1575, Occupations Code;

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

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

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

27 SECTION 45. On September 1, 2003:

1 (1) all functions and activities related to Chapter
2 711, Health and Safety Code, performed by the Texas Department of
3 Health immediately before that date are transferred to the Texas
4 Funeral Service Commission;

5 (2) a rule or form of the Texas Department of Health
6 related to Chapter 711, Health and Safety Code, is a rule or form of
7 the Texas Funeral Service Commission and remains in effect until
8 amended or replaced by that commission;

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

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

20 SECTION 46. On March 1, 2004, Subchapter N, Chapter 651,
21 Occupations Code, is repealed.

22 SECTION 47. (a) A cemetery or crematory establishment is
23 not required to hold a license under Chapter 651, Occupations Code,
24 as amended by this Act, until March 1, 2004.

25 (b) A crematory operator is not required to hold a license
26 under Chapter 651, Occupations Code, as amended by this Act, until
27 September 1, 2004.

1 SECTION 48. This Act takes effect September 1, 2003.