

By: Chisum

H.B. No. 1538

A BILL TO BE ENTITLED

1 AN ACT

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.

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

6 SECTION 1. Section 651.002, Occupations Code, is amended to  
7 read as follows:

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

13 SECTION 2. Section 651.003(a), Occupations Code, is amended  
14 to read as follows:

15 (a) This chapter does not affect the authority of the Texas  
16 Department of Banking to enforce Chapter 154, Finance Code, or to  
17 perform financial regulation of perpetual care cemeteries under  
18 Chapter 712, Health and Safety Code.

19 SECTION 3. Subchapter A, Chapter 651, Occupations Code, is  
20 amended by adding Section 651.004 to read as follows:

21 Sec. 651.004. REGULATION OF CEMETERY AND CREMATORY  
22 SERVICES. (a) The commission shall regulate cemetery and  
23 crematory services as provided by this chapter.

24 (b) The commission may not regulate cemetery or crematory

1 services that occur after burial or inurnment unless the services  
2 relate to the care and treatment of the remains in an urn, casket,  
3 or outer enclosure.

4 SECTION 4. Sections 651.151(a) and (b), Occupations Code,  
5 are amended to read as follows:

6 (a) The commission shall establish proficiency,  
7 professionalism, ethics, and qualification standards for persons  
8 issued a license under this chapter [~~funeral directors and~~  
9 ~~embalmers~~].

10 (b) The commission shall examine each applicant for a  
11 crematory operator's license, funeral director's license,  
12 embalmer's license, or provisional license and shall issue the  
13 appropriate license to a person who meets the licensing  
14 requirements.

15 SECTION 5. Section 651.152, Occupations Code, is amended to  
16 read as follows:

17 Sec. 651.152. RULES; PROCEDURES; FORMS; STANDARDS OF  
18 CONDUCT. (a) The commission shall [~~may~~] adopt rules, establish  
19 procedures, and prescribe forms necessary to administer and enforce  
20 this chapter and Chapters 711, 714, and 715, Health and Safety Code.

21 (b) The commission shall adopt rules to establish standards  
22 of professional conduct and ethical behavior for a license holder  
23 under this chapter.

24 SECTION 6. Subchapter D, Chapter 651, Occupations Code, is  
25 amended by adding Section 651.1525 to read as follows:

26 Sec. 651.1525. EARLY PARTICIPATION IN RULEMAKING PROCESS;  
27 GUIDELINES. (a) Before publishing a proposed rule for public

1 comment, the commission shall seek advice and opinions from persons  
2 who will be most affected by the rule. At a minimum, those persons  
3 must include consumer groups and trade associations that represent  
4 persons from each group regulated by the commission, including  
5 funeral directors and cemetery and crematory operators.

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

9 SECTION 7. Section 651.154(a), Occupations Code, is amended  
10 to read as follows:

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

13 (1) the crematory operator's, funeral director's, and  
14 embalmer's application fee, license fee, duplicate license fee, and  
15 reciprocal license fee; and

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

18 SECTION 8. Section 651.157, Occupations Code, is amended to  
19 read as follows:

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

26 (b) If the commission finds a violation of this chapter or  
27 of Chapter 193, ~~or~~ 361, 711, 714, or 715, Health and Safety Code,

1 the commission shall inspect the cemetery, crematory, or funeral  
2 establishment annually until the commission determines that the  
3 establishment is free of violations.

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

6 (d) The commission by rule shall establish:

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

9 (2) criteria, including consideration of the  
10 establishment's inspection and complaint history, regarding when  
11 the commission should inspect an establishment based on the risk of  
12 a violation at an establishment.

13 (e) A premises on which funeral directing, interment,  
14 cremation, or embalming is practiced shall be open at all times to  
15 inspection for any violation of this chapter or of Chapter 193 or  
16 361, Health and Safety Code, by:

17 (1) an agent of the commission;

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

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

21 (f) Before a commission agent inspects a cemetery,  
22 crematory, or funeral establishment, the agent shall review the  
23 inspection reports filed with the commission on the establishment.  
24 During the inspection, the agent shall determine whether previously  
25 identified problems have been corrected and whether a pattern of  
26 violations exists. The commission shall consider the information  
27 from the inspection reports in determining whether a penalty should

1 be imposed against an establishment.

2 SECTION 9. Section 651.164, Occupations Code, is amended to  
3 read as follows:

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

15 SECTION 10. Subchapter D, Chapter 651, Occupations Code, is  
16 amended by adding Sections 651.166 and 651.167 to read as follows:

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

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

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

26 (A) interact with the commission through the  
27 Internet; and

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

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

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

8           (1) negotiated rulemaking procedures under Chapter  
9 2008, Government Code, for the adoption of commission rules; and

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

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

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

20           (1) coordinate the implementation of the policy  
21 adopted under Subsection (a);

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

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

27           SECTION 11. Sections 651.202(a) and (b), Occupations Code,

1 are amended to read as follows:

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

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

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

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

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

17 (1) establish procedures regarding the receipt,  
18 investigation, and disposition of complaints;

19 (2) allow for an informal hearing process;

20 (3) establish a formal hearing process;

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

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

26 (6) establish procedures by which a commission  
27 employee may dismiss a complaint, subject to approval by the

1 executive director or the executive director's designee, if the  
2 investigation does not reveal a violation.

3 SECTION 12. The heading to Subchapter F, Chapter 651,  
4 Occupations Code, is amended to read as follows:

5 SUBCHAPTER F. LICENSE REQUIREMENTS: CREMATORY OPERATORS, FUNERAL  
6 DIRECTORS, AND EMBALMERS

7 SECTION 13. Section 651.251, Occupations Code, is amended  
8 by adding Subsection (c) to read as follows:

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

14 SECTION 14. Section 651.252(a), Occupations Code, is  
15 amended to read as follows:

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

19 SECTION 15. Section 651.253, Occupations Code, is amended  
20 by adding Subsection (c) to read as follows:

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

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

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

26 (3) have successfully completed the applicable  
27 written examination.



1 SECTION 16. Section 651.254(a), Occupations Code, is  
2 amended to read as follows:

3 (a) The examinations for a crematory operator's license,  
4 funeral director's license, and [~~an~~] embalmer's license shall be  
5 held at least annually. The examinations shall be given at the time  
6 and place designated by the commission. The commission shall give  
7 notice of the examinations.

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

10 Sec. 651.2565. EXAMINATIONS REQUIRED FOR CREMATORY  
11 OPERATOR'S LICENSE. The commission shall administer or arrange for  
12 the administration of:

13 (1) a written professionally prepared examination on:

14 (A) the art and technique of cremation;

15 (B) the signs of death;

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

17 (D) sanitation and hygiene;

18 (E) cremation law; and

19 (F) business and professional ethics; and

20 (2) a written examination developed by the commission  
21 or developed for the commission by contract on:

22 (A) laws applicable to vital statistics  
23 pertaining to dead human bodies; and

24 (B) local and state rules and laws relating to  
25 the transportation, care, and disposition of dead human bodies.

26 SECTION 18. Section 651.261, Occupations Code, is amended  
27 to read as follows:

1           Sec. 651.261. POSTING OF LICENSE. A license holder shall  
2 conspicuously display the holder's license in each place of  
3 business at which the license holder practices [~~funeral directing~~  
4 ~~or embalming~~].

5           SECTION 19. Sections 651.267(a) and (d), Occupations Code,  
6 are amended to read as follows:

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

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

16           SECTION 20. The heading to Subchapter H, Chapter 651,  
17 Occupations Code, is amended to read as follows:

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

20           SECTION 21. Subchapter H, Chapter 651, Occupations Code, is  
21 amended by adding Sections 651.353 and 651.3535 to read as follows:

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

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

27           (c) To obtain an initial cemetery license, an applicant must

1 apply for a license and pay the licensing fee. The commission shall  
2 issue an initial cemetery license on determining that the applicant  
3 satisfies the requirements of this chapter.

4 Sec. 651.3535. CREMATORY ESTABLISHMENT REQUIREMENTS. (a)  
5 A crematory may not conduct a crematory business unless it is  
6 licensed by the commission.

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

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

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

16 (e) A crematory must be operated by a licensed crematory  
17 operator.

18 SECTION 22. Section 651.354, Occupations Code, is amended  
19 to read as follows:

20 Sec. 651.354. RENEWAL OF CEMETERY, CREMATORY, OR FUNERAL  
21 ESTABLISHMENT LICENSE. (a) The commission shall mail written  
22 notice to a cemetery, crematory, or funeral establishment of the  
23 impending expiration of the [~~funeral~~] establishment's license not  
24 later than the 30th day before the expiration date of the license.  
25 The notice must state that:

26 (1) to renew the license, the cemetery, crematory, or  
27 funeral establishment must pay the renewal fee not later than

1 September 30; and

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

4 (b) A cemetery, crematory, or funeral establishment that  
5 fails to pay the license renewal fee by the due date is subject to a  
6 late payment penalty equal to the amount charged for the license  
7 renewal fee.

8 (c) If the license is expired for longer than 30 days, the  
9 cemetery, crematory, or funeral establishment may not renew the  
10 license and may not operate as a cemetery, crematory, or funeral  
11 establishment until the establishment is issued a new license in  
12 the manner provided for issuing an original license.

13 SECTION 23. Section 651.4065(c), Occupations Code, is  
14 amended to read as follows:

15 (c) The operator of a [~~registrant for the~~] cemetery [~~or~~  
16 ~~crematory~~] shall sign a [the] purchase agreement for a cemetery,  
17 and a licensed crematory operator shall sign a purchase agreement  
18 for a crematory.

19 SECTION 24. Section 651.455(a), Occupations Code, is  
20 amended to read as follows:

21 (a) A person regulated by the commission violates this  
22 chapter if the person uses a statement that misleads or deceives the  
23 public, including a fraudulent statement or any other type of a  
24 false or misleading statement regarding:

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

27 (2) the preservative qualities of funeral merchandise

1 or funeral, cemetery, or crematory services in preventing or  
2 substantially delaying natural decomposition of human remains;

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

5 (4) the licenses ~~[or registrations]~~ held by the  
6 personnel in the operation of the cemetery, crematory, or funeral  
7 establishment; or

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

10 SECTION 25. Section 651.456, Occupations Code, is amended  
11 to read as follows:

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

14 (1) takes custody of a dead human body without the  
15 permission of:

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

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

21 (2) refuses to promptly surrender a dead human body to  
22 a person or agent authorized to make funeral arrangements for the  
23 deceased; or

24 (3) exhibits disrespect for dead human bodies by  
25 violating any state law governing the transportation, storage,  
26 refrigeration, inurnment, interment, or disinterment of a dead  
27 human body.

1 SECTION 26. Section 651.459(a), Occupations Code, is  
2 amended to read as follows:

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

4 (1) wilfully makes a false statement on:

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

7 (B) a document required by this chapter or a rule  
8 adopted under this chapter;

9 (2) engages in fraudulent, unprofessional, or  
10 deceptive conduct in providing funeral services or merchandise to a  
11 customer;

12 (3) engages in dishonest conduct, wilful conduct, or  
13 negligence in the practice of embalming or funeral directing that  
14 is likely to or does deceive, defraud, or otherwise injure the  
15 public;

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

18 (5) directly or indirectly employs a person to solicit  
19 individuals or institutions by whose influence dead human bodies  
20 may be turned over to a particular funeral director, embalmer, or  
21 funeral establishment;

22 (6) misappropriates funds held by a license holder, a  
23 funeral establishment, an employee or agent of the funeral  
24 establishment, or another depository, that create an obligation to  
25 provide a funeral service or merchandise, including retaining for  
26 an unreasonable time excess funds paid by or on behalf of the  
27 customer for which the customer is entitled to a refund; or

1           (7) performs acts of funeral directing or embalming  
2 that are outside the licensed scope and authority of the license  
3 holder, or performs acts of funeral directing or embalming in a  
4 capacity other than that of an employee, agent, subcontractor, or  
5 assignee of a licensed funeral establishment that has contracted to  
6 perform those acts.

7           SECTION 27. Section 711.004(f), Health and Safety Code, is  
8 amended to read as follows:

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

17           SECTION 28. Section 711.007(b), Health and Safety Code, is  
18 amended to read as follows:

19           (b) The proceeding may be brought by:

20                 (1) the attorney general;

21                 (2) the Banking Commissioner of Texas;

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

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

1 (5) the owner of a residence:

2 (A) in or near the municipality in which the  
3 cemetery is located; or

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

6 (6) the Texas Funeral Service Commission; or

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

8 SECTION 29. Section 715.003, Health and Safety Code, is  
9 amended to read as follows:

10 Sec. 715.003. PARTIES TO ACTION. An action commenced under  
11 this chapter shall be brought by the incorporators of the nonprofit  
12 corporation on behalf of the nonprofit corporation. The necessary  
13 parties to the action on which citation shall be served under  
14 Section 715.006 are:

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

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

19 (3) the Texas Historical Commission; and

20 (4) the Texas Funeral Service Commission.

21 SECTION 30. Section 715.006(a), Health and Safety Code, is  
22 amended to read as follows:

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

27 (1) the record owners of the real property comprising



1 the cemetery at their last known addresses;

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

4 (3) the Texas Historical Commission at its office in  
5 Austin, Texas;

6 (4) the Texas Funeral Service Commission; and

7 (5) [~~4~~] the county auditor of the county in which  
8 the cemetery is located.

9 SECTION 31. The following laws are repealed:

10 (1) Section 651.1575, Occupations Code;

11 (2) Section 651.455(b), Occupations Code; and

12 (3) Section 651.506(j), Occupations Code.

13 SECTION 32. On September 1, 2003:

14 (1) all functions and activities related to Chapter  
15 711, Health and Safety Code, performed by the Texas Department of  
16 Health immediately before that date are transferred to the Texas  
17 Funeral Service Commission;

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

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

25 (4) a complaint, investigation, or other proceeding  
26 before the Texas Department of Health that is related to Chapter  
27 711, Health and Safety Code, is transferred without change in

1 status to the Texas Funeral Service Commission, and the Texas  
2 Funeral Service Commission assumes, as appropriate and without a  
3 change in status, the position of the Texas Department of Health in  
4 an action or proceeding to which the Texas Department of Health is a  
5 party.

6 SECTION 33. On March 1, 2004, Subchapter N, Chapter 651,  
7 Occupations Code, is repealed.

8 SECTION 34. (a) A cemetery or crematory establishment is  
9 not required to hold a license under Chapter 651, Occupations Code,  
10 as amended by this Act, until March 1, 2004.

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

14 SECTION 35. This Act takes effect September 1, 2003.