

1-1 By: Chisum, et al. (Senate Sponsor - Shapleigh) H.B. No. 1538
1-2 (In the Senate - Received from the House May 7, 2003;
1-3 May 9, 2003, read first time and referred to Committee on
1-4 Government Organization; May 24, 2003, reported adversely, with
1-5 favorable Committee Substitute by the following vote: Yeas 4,
1-6 Nays 0; May 24, 2003, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR H.B. No. 1538 By: Armbrister

1-8 A BILL TO BE ENTITLED
1-9 AN ACT

1-10 relating to the continuation and functions of the Texas Funeral
1-11 Service Commission, including certain functions transferred to the
1-12 commission from the Texas Department of Health, and the powers and
1-13 duties of the Texas Finance Commission and the banking commissioner
1-14 of Texas regarding cemeteries; providing administrative and civil
1-15 penalties.

1-16 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-17 SECTION 1. Section 651.001, Occupations Code, is amended by
1-18 adding Subdivision (12-a) to read as follows:

1-19 (12-a) "Perpetual care cemetery" means a cemetery
1-20 regulated under Chapter 712, Health and Safety Code.

1-21 SECTION 2. Section 651.002, Occupations Code, is amended to
1-22 read as follows:

1-23 Sec. 651.002. APPLICATION OF SUNSET ACT. The Texas Funeral
1-24 Service Commission is subject to Chapter 325, Government Code
1-25 (Texas Sunset Act). Unless continued in existence as provided by
1-26 that chapter, the commission is abolished and this chapter expires
1-27 September 1, 2015 [~~2003~~].

1-28 SECTION 3. Section 651.003(a), Occupations Code, is amended
1-29 to read as follows:

1-30 (a) This chapter does not affect the authority of the Texas
1-31 Department of Banking to enforce Chapter 154, Finance Code, or to
1-32 regulate perpetual care cemeteries.

1-33 SECTION 4. Subchapter A, Chapter 651, Occupations Code, is
1-34 amended by adding Section 651.004 to read as follows:

1-35 Sec. 651.004. REGULATION OF CEMETERY AND CREMATORY
1-36 SERVICES. (a) The commission shall regulate cemetery and
1-37 crematory services as provided by this chapter and Chapter 716,
1-38 Health and Safety Code.

1-39 (b) The commission may not regulate cemetery or crematory
1-40 services that occur after burial or inurnment unless the services
1-41 relate to the care and treatment of the remains in an urn, casket,
1-42 or outer enclosure.

1-43 SECTION 5. Sections 651.057(a) and (b), Occupations Code,
1-44 are amended to read as follows:

1-45 (a) The governor shall designate one [~~public~~] member of the
1-46 commission as the presiding officer of the commission to serve in
1-47 that capacity at the pleasure of the governor.

1-48 (b) After 30 days' written notice is given to the
1-49 commissioners, the commission shall elect from its [~~public~~] members
1-50 an assistant presiding officer. The assistant presiding officer
1-51 serves in that capacity for one year.

1-52 SECTION 6. Section 651.151(a), Occupations Code, is amended
1-53 to read as follows:

1-54 (a) The commission shall establish proficiency,
1-55 professionalism, ethics, and qualification standards for
1-56 individuals issued a license under this chapter [~~funeral directors~~
1-57 ~~and embalmers~~].

1-58 SECTION 7. Section 651.152, Occupations Code, is amended to
1-59 read as follows:

1-60 Sec. 651.152. RULES; PROCEDURES; FORMS. The commission
1-61 shall [~~may~~] adopt rules, establish procedures, and prescribe forms
1-62 necessary to administer and enforce this chapter and Chapters 714
1-63 and 715, Health and Safety Code.

2-1 SECTION 8. Subchapter D, Chapter 651, Occupations Code, is
2-2 amended by adding Section 651.1525 to read as follows:

2-3 Sec. 651.1525. EARLY PARTICIPATION IN RULEMAKING PROCESS;
2-4 GUIDELINES. (a) Before publishing a proposed rule for public
2-5 comment, the commission shall seek advice and opinions from persons
2-6 who will be most affected by the rule. At a minimum, those persons
2-7 must include consumer groups and trade associations that represent
2-8 persons from each group regulated by the commission, including
2-9 funeral directors and cemetery and crematory operators.

2-10 (b) The commission shall develop guidelines to implement
2-11 this section. The guidelines must establish a method to determine
2-12 who will be most affected by a proposed rule.

2-13 SECTION 9. Section 651.154, Occupations Code, is amended by
2-14 amending Subsection (a) and adding Subsection (c) to read as
2-15 follows:

2-16 (a) The commission shall set the following fees in amounts
2-17 reasonable and necessary to administer this chapter:

2-18 (1) the funeral director's and embalmer's application
2-19 fee, license fee, duplicate license fee, and reciprocal license
2-20 fee; and

2-21 (2) the cemetery or funeral establishment license fee,
2-22 renewal fee, and late renewal penalty.

2-23 (c) The commission may not charge a fee to a perpetual care
2-24 cemetery, including a fee for issuing or renewing a license issued
2-25 under this chapter.

2-26 SECTION 10. Section 651.157, Occupations Code, is amended
2-27 to read as follows:

2-28 Sec. 651.157. INSPECTION OF CEMETERY, CREMATORY, OR FUNERAL
2-29 ESTABLISHMENT. (a) Except as provided by Subsection (b), a
2-30 licensed cemetery, crematory, or funeral establishment shall be
2-31 inspected at least once every two years by an agent of the
2-32 commission or by an agent of the state or a political subdivision
2-33 authorized by the commission to make inspections on its behalf.

2-34 (b) If the commission finds a violation of this chapter or
2-35 of Chapter 193, ~~or~~ 361, 711, 714, 715, or 716, Health and Safety
2-36 Code, the commission shall inspect the cemetery, crematory, or
2-37 funeral establishment annually until the commission determines
2-38 that the establishment is free of violations.

2-39 (c) A report of each inspection made under this section
2-40 shall be filed with the commission.

2-41 (d) The commission by rule shall establish:

2-42 (1) procedures for the inspection of a cemetery,
2-43 crematory, or funeral establishment required by this section; and

2-44 (2) criteria, including consideration of the
2-45 establishment's inspection and complaint history, regarding when
2-46 the commission should inspect an establishment based on the risk of
2-47 a violation at an establishment.

2-48 (e) A premises on which funeral directing, interment,
2-49 cremation, or embalming is practiced shall be open at all times to
2-50 inspection for any violation of this chapter or of Chapter 193, ~~or~~
2-51 361, or 716, Health and Safety Code, by:

2-52 (1) an agent of the commission;

2-53 (2) an authorized agent of the state; or

2-54 (3) an authorized agent of the county or municipality
2-55 in which the premises is located.

2-56 (f) Before a commission agent inspects a cemetery,
2-57 crematory, or funeral establishment, the agent shall review the
2-58 inspection reports filed with the commission on the establishment.
2-59 During the inspection, the agent shall determine whether previously
2-60 identified problems have been corrected and whether a pattern of
2-61 violations exists. The commission shall consider the information
2-62 from the inspection reports in determining whether a penalty should
2-63 be imposed against an establishment.

2-64 SECTION 11. Subchapter D, Chapter 651, Occupations Code, is
2-65 amended by adding Section 651.1571 to read as follows:

2-66 Sec. 651.1571. INSPECTION REQUIREMENTS FOR CERTAIN
2-67 CEMETERIES; EXCEPTION FOR PERPETUAL CARE CEMETERIES. (a) This
2-68 section and Section 651.157 do not apply to perpetual care
2-69 cemeteries.

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

(1) a cemetery may not be inspected unless:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

(1) on each license [~~or registration~~] form,

4-1 application, or written contract for services of a person regulated
4-2 under this chapter;

4-3 (2) on a sign prominently displayed in the place of
4-4 business of each person regulated under this chapter; or

4-5 (3) in a bill for service provided by a person
4-6 regulated under this chapter.

4-7 (b) The commission shall adopt rules concerning a complaint
4-8 filed under this section. The rules adopted under this subsection
4-9 must:

4-10 (1) establish procedures regarding the receipt,
4-11 investigation, and disposition of complaints;

4-12 (2) allow for an informal hearing process;

4-13 (3) establish a formal hearing process;

4-14 (4) ensure that the person who filed the complaint has
4-15 an opportunity to explain the allegations made in the complaint;

4-16 (5) ensure that the license holder [~~or registrant~~] who
4-17 is the subject of the complaint has an opportunity to be heard
4-18 regarding the complaint; and

4-19 (6) establish procedures by which a commission
4-20 employee may dismiss a complaint, subject to approval by the
4-21 executive director or the executive director's designee, if the
4-22 investigation does not reveal a violation.

4-23 SECTION 15. Section 651.2595(d), Occupations Code, is
4-24 amended to read as follows:

4-25 (d) The commission shall approve or deny a provisional
4-26 license holder's application for a license not later than the
4-27 second anniversary of [~~180th day after~~] the date on which the
4-28 provisional license is issued. The commission may extend the
4-29 two-year [~~180-day~~] period if the results of an examination have not
4-30 been received by the commission before the end of that period.

4-31 SECTION 16. Section 651.261, Occupations Code, is amended
4-32 to read as follows:

4-33 Sec. 651.261. POSTING OF LICENSE. A license holder shall
4-34 conspicuously display the holder's license in each place of
4-35 business at which the license holder practices [~~funeral directing~~
4-36 ~~or embalming~~].

4-37 SECTION 17. Sections 651.267(a) and (d), Occupations Code,
4-38 are amended to read as follows:

4-39 (a) On application, the commission may reissue a [~~funeral~~
4-40 ~~director's or embalmer's~~] license issued under this subchapter to a
4-41 person whose license has been suspended or revoked. An application
4-42 to reissue a license may not be made before the first anniversary of
4-43 the date of the suspension or revocation.

4-44 (d) A license that has been revoked or suspended for a
4-45 period of five years or more may be reinstated only after the
4-46 applicant passes the applicable [~~written embalming or funeral~~
4-47 ~~directing~~] examination.

4-48 SECTION 18. Sections 651.302(a) and (b), Occupations Code,
4-49 are amended to read as follows:

4-50 (a) The commission shall issue a provisional license to
4-51 practice funeral directing to an applicant who:

4-52 (1) is at least 18 years of age;

4-53 (2) has completed the educational requirements of
4-54 Section 651.253 or is enrolled in an accredited school or college of
4-55 mortuary science;

4-56 (3) is employed by a funeral director to learn funeral
4-57 directing or embalming under the instruction and supervision of the
4-58 funeral director [~~takes the written examination given by the~~
4-59 ~~commission~~];

4-60 (4) files an application for a provisional license on
4-61 a form provided by the commission and verified under oath by the
4-62 applicant; and

4-63 (5) pays any required application or license fee.

4-64 (b) The commission shall issue a provisional license to
4-65 practice embalming to an applicant who:

4-66 (1) is at least 18 years of age;

4-67 (2) has completed the educational requirements of
4-68 Section 651.253 or is enrolled in an accredited school or college of
4-69 mortuary science;

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

5-8 SECTION 19. Section 651.303(b), Occupations Code, is
 5-9 amended to read as follows:

5-10 (b) The commission by rule shall define the terms of
 5-11 employment of a provisional license holder. The terms of
 5-12 employment:

5-13 (1) must include service by the provisional license
 5-14 holder:

5-15 (A) of at least 17 hours a week or 73 hours a
 5-16 month; and

5-17 (B) under actual working conditions and under the
 5-18 personal supervision of a funeral director or embalmer; and

5-19 (2) may not require more than 17 hours a week or 73
 5-20 hours a month.

5-21 SECTION 20. Subchapter G, Chapter 651, Occupations Code, is
 5-22 amended by adding Section 651.3035 to read as follows:

5-23 Sec. 651.3035. MORTUARY COLLEGE CREDIT FOR PROVISIONAL
 5-24 LICENSE PROGRAM. (a) A case completed under Section 651.303(d) may
 5-25 serve as credit for both mortuary school or college and the
 5-26 provisional license holder program.

5-27 (b) A mortuary school or college may designate a funeral
 5-28 director or embalmer who is supervising a provisional license
 5-29 holder under Section 651.303 as a clinical instructor for the
 5-30 provisional license holder.

5-31 SECTION 21. Section 651.304(b), Occupations Code, is
 5-32 amended to read as follows:

5-33 (b) A provisional license holder shall report to the
 5-34 commission monthly. The report must:

5-35 (1) be made not later than the 10th day after the end
 5-36 of the month;

5-37 (2) identify each case that the provisional license
 5-38 holder:

5-39 (A) assisted in handling during that month if the
 5-40 provisional license holder is a funeral director applicant; or

5-41 (B) handled or assisted in handling during that
 5-42 month if the provisional license holder is an embalmer applicant;

5-43 (3) list any credit earned for mortuary school or
 5-44 college under Section 651.3035; and

5-45 (4) ~~[(3)]~~ be certified by the funeral director or
 5-46 embalmer under whom the provisional license holder performed the
 5-47 work.

5-48 SECTION 22. The heading to Subchapter H, Chapter 651,
 5-49 Occupations Code, is amended to read as follows:

5-50 SUBCHAPTER H. LICENSE REQUIREMENTS: CEMETERY, FUNERAL,
 5-51 [ESTABLISHMENTS] AND COMMERCIAL EMBALMER ESTABLISHMENTS

5-52 SECTION 23. Subchapter H, Chapter 651, Occupations Code, is
 5-53 amended by adding Section 651.353 to read as follows:

5-54 Sec. 651.353. CEMETERY ESTABLISHMENT REQUIREMENTS. (a) A
 5-55 cemetery may not conduct a cemetery business unless the facility is
 5-56 licensed by the commission.

5-57 (b) This chapter does not require a cemetery to be owned by a
 5-58 person licensed under this chapter.

5-59 (c) To obtain an initial cemetery license, an applicant must
 5-60 apply for a license and pay the licensing fee. The commission shall
 5-61 issue an initial cemetery license on determining that the applicant
 5-62 satisfies the requirements of this chapter.

5-63 (d) This section does not apply to:

5-64 (1) a family, fraternal, or community cemetery that is
 5-65 not larger than 10 acres;

5-66 (2) an unincorporated association of plot owners not
 5-67 operated for profit;

5-68 (3) a church, a religious society or denomination, or
 5-69 an entity solely administering the temporalities of a church or

6-1 religious society or denomination; or
6-2 (4) a public cemetery owned by this state, a county, or
6-3 a municipality.

6-4 SECTION 24. Section 651.354, Occupations Code, is amended
6-5 to read as follows:

6-6 Sec. 651.354. RENEWAL OF CEMETERY OR FUNERAL ESTABLISHMENT
6-7 LICENSE. (a) The commission shall mail written notice to a
6-8 cemetery or funeral establishment of the impending expiration of
6-9 the [funeral] establishment's license not later than the 30th day
6-10 before the expiration date of the license. Except as provided by
6-11 Subsection (d), the [The] notice must state that:

6-12 (1) to renew the license, the cemetery or funeral
6-13 establishment must pay the renewal fee not later than September 30;
6-14 and

6-15 (2) the license is automatically renewed on receipt of
6-16 the renewal fee.

6-17 (b) A cemetery or funeral establishment that fails to pay
6-18 the license renewal fee by the due date is subject to a late payment
6-19 penalty equal to the amount charged for the license renewal fee.

6-20 (c) If the license is expired for longer than 30 days, the
6-21 cemetery or funeral establishment may not renew the license and may
6-22 not operate as a cemetery or funeral establishment until the
6-23 establishment is issued a new license in the manner provided for
6-24 issuing an original license.

6-25 (d) To renew a license for a perpetual care cemetery, the
6-26 cemetery must submit a renewal on a form prescribed by the
6-27 commission. The license is renewed on receipt of the form by the
6-28 commission.

6-29 SECTION 25. Section 651.4065(c), Occupations Code, is
6-30 amended to read as follows:

6-31 (c) The operator of a [registrant for the] cemetery [or
6-32 crematory] shall sign a [the] purchase agreement for a cemetery.

6-33 SECTION 26. Section 651.455(a), Occupations Code, is
6-34 amended to read as follows:

6-35 (a) A person regulated by the commission violates this
6-36 chapter if the person uses a statement that misleads or deceives the
6-37 public, including a fraudulent statement or any other type of
6-38 false or misleading statement regarding:

6-39 (1) a legal, religious, or cemetery requirement for
6-40 funeral merchandise or funeral, cemetery, or crematory services;

6-41 (2) the preservative qualities of funeral merchandise
6-42 or funeral, cemetery, or crematory services in preventing or
6-43 substantially delaying natural decomposition of human remains;

6-44 (3) the airtight or watertight properties of a casket
6-45 or outer enclosure; ~~or~~

6-46 (4) the licenses ~~[or registrations]~~ held by the
6-47 personnel in the operation of the cemetery, crematory, or funeral
6-48 establishment; or

6-49 (5) an activity regulated under this chapter,
6-50 including the sale of funeral-related goods or services.

6-51 SECTION 27. Section 651.456, Occupations Code, is amended
6-52 to read as follows:

6-53 Sec. 651.456. UNETHICAL CONDUCT REGARDING CUSTODY OF DEAD
6-54 HUMAN BODY. A person violates this chapter if the person:

6-55 (1) takes custody of a dead human body without the
6-56 permission of:

6-57 (A) the person or the agent of the person
6-58 authorized to make funeral arrangements for the deceased; or

6-59 (B) a medical examiner or a justice of the peace
6-60 who has jurisdiction over the body under Articles 49.02-49.05, Code
6-61 of Criminal Procedure; ~~or~~

6-62 (2) refuses to promptly surrender a dead human body to
6-63 a person or agent authorized to make funeral arrangements for the
6-64 deceased; or

6-65 (3) violates any state law governing the
6-66 transportation, storage, refrigeration, inurnment, interment, or
6-67 disinterment of a dead human body.

6-68 SECTION 28. Section 651.459(a), Occupations Code, is
6-69 amended to read as follows:

7-1 (a) A person violates this chapter if the person:
7-2 (1) wilfully makes a false statement on:
7-3 (A) a death certificate, including forgery of a
7-4 physician's signature; or
7-5 (B) a document required by this chapter or a rule
7-6 adopted under this chapter;
7-7 (2) engages in fraudulent, unprofessional, or
7-8 deceptive conduct in providing funeral services or merchandise to a
7-9 customer;
7-10 (3) engages in dishonest conduct, wilful conduct, or
7-11 negligence in the practice of embalming or funeral directing that
7-12 is likely to or does deceive, defraud, or otherwise injure the
7-13 public;
7-14 (4) causes the execution of a document by the use of
7-15 fraud, deceit, or misrepresentation;
7-16 (5) directly or indirectly employs a person to solicit
7-17 individuals or institutions by whose influence dead human bodies
7-18 may be turned over to a particular funeral director, embalmer, or
7-19 funeral establishment;
7-20 (6) misappropriates funds held by a license holder, a
7-21 funeral establishment, an employee or agent of the funeral
7-22 establishment, or another depository, that create an obligation to
7-23 provide a funeral service or merchandise, including retaining for
7-24 an unreasonable time excess funds paid by or on behalf of the
7-25 customer for which the customer is entitled to a refund; or
7-26 (7) performs acts of funeral directing or embalming
7-27 that are outside the licensed scope and authority of the license
7-28 holder, or performs acts of funeral directing or embalming in a
7-29 capacity other than that of an employee, agent, subcontractor, or
7-30 assignee of a licensed funeral establishment that has contracted to
7-31 perform those acts.

7-32 SECTION 29. Subchapter K, Chapter 651, Occupations Code, is
7-33 amended by adding Section 651.5026 to read as follows:
7-34 Sec. 651.5026. TEMPORARY LICENSE SUSPENSION OR
7-35 RESTRICTION; DISCIPLINARY PANEL. (a) The presiding officer of the
7-36 commission shall appoint a three-member disciplinary panel
7-37 composed of two funeral industry members and one public member of
7-38 the commission to determine whether a funeral director's or
7-39 embalmer's license should be temporarily suspended or restricted.
7-40 (b) Chapter 551, Government Code, does not prohibit the
7-41 disciplinary panel from holding a meeting by telephone conference
7-42 call if convening the panel at one location is inconvenient for any
7-43 member of the panel.
7-44 (c) The disciplinary panel shall temporarily suspend or
7-45 restrict the license if the panel determines from the information
7-46 presented to it with or without a hearing, that the license holder
7-47 has violated this chapter or a rule adopted under this chapter and
7-48 would, by the license holder's continued unrestricted activity,
7-49 constitute a continuing threat to the public welfare.
7-50 (d) The suspension or restriction may be without notice or
7-51 hearing if:
7-52 (1) the commission immediately provides notice of the
7-53 suspension or restriction to the funeral director or embalmer;
7-54 (2) proceedings for a hearing under Section 651.506
7-55 are initiated simultaneously with the suspension or restriction;
7-56 and
7-57 (3) the hearing is held as required by Chapter 2001,
7-58 Government Code, and this chapter not later than 48 hours after the
7-59 suspension or restriction.
7-60 (e) If the disciplinary panel affirms the temporary
7-61 suspension or restriction at a hearing, the commission shall
7-62 schedule an informal compliance meeting that meets the requirements
7-63 of Section 2001.054(c), Government Code, and this chapter to be
7-64 held as soon as practicable unless:
7-65 (1) it is evident from the determination of the panel
7-66 that the funeral director or embalmer would be unable to show
7-67 compliance at the informal meeting regarding the issues that are
7-68 the basis for the temporary suspension or restriction; or
7-69 (2) an informal meeting has already been held

8-1 regarding the issues that are the basis for the temporary
8-2 suspension or restriction.

8-3 (f) If the funeral director or embalmer is unable to show
8-4 compliance at the informal meeting under Subsection (e), the
8-5 commission shall file a formal complaint under this chapter as soon
8-6 as practicable.

8-7 (g) If the disciplinary panel does not temporarily suspend
8-8 or restrict the license after considering the information presented
8-9 to it at a hearing under Subsection (c), the facts that were the
8-10 basis for the temporary suspension or restriction may not be the
8-11 sole basis of another proceeding to temporarily suspend or restrict
8-12 the funeral director's or embalmer's license. The commission may
8-13 use those same facts in a later investigation to obtain new
8-14 information that may be the basis for the temporary suspension or
8-15 restriction of a funeral director's or embalmer's license,
8-16 including facts presented to the disciplinary panel and facts known
8-17 to the commission at the time evidence was presented to the
8-18 disciplinary panel.

8-19 SECTION 30. Section 711.004(f), Health and Safety Code, is
8-20 amended to read as follows:

8-21 (f) Except as is authorized for a justice of the peace
8-22 acting as coroner or medical examiner under Chapter 49, Code of
8-23 Criminal Procedure, remains may not be removed from a cemetery
8-24 except on the written order of the state registrar or the state
8-25 registrar's designee. The cemetery organization shall keep a
8-26 duplicate copy of the order as part of its records. The Texas
8-27 Funeral Service Commission [~~Board of Health~~] may adopt rules to
8-28 implement this subsection.

8-29 SECTION 31. Section 711.007(b), Health and Safety Code, is
8-30 amended to read as follows:

- 8-31 (b) The proceeding may be brought by:
8-32 (1) the attorney general;
8-33 (2) the Banking Commissioner of Texas;
8-34 (3) the governing body of a municipality with a
8-35 population of more than 25,000, if the cemetery is located in the
8-36 municipality or not farther than five miles from the municipality;
8-37 (4) the district attorney of the county, if the
8-38 cemetery is located in an area of the county not described by
8-39 Subdivision (3);
8-40 (5) the owner of a residence:
8-41 (A) in or near the municipality in which the
8-42 cemetery is located; or
8-43 (B) in the area proscribed for the location of a
8-44 cemetery by Section 711.008;
8-45 (6) the Texas Funeral Service Commission; or
8-46 (7) [~~(6)~~] the owner of a plot in the cemetery.

8-47 SECTION 32. Subchapter A, Chapter 711, Health and Safety
8-48 Code, is amended by adding Section 711.012 to read as follows:

8-49 Sec. 711.012. RULES. (a) The Finance Commission of Texas
8-50 may adopt rules to enforce and administer Sections 711.003,
8-51 711.008, 711.021-711.024, 711.032-711.035, 711.038,
8-52 711.040-711.042, 711.052, 711.061, and 711.062 relating to
8-53 perpetual care cemeteries.

8-54 (b) The Texas Funeral Service Commission may adopt rules,
8-55 establish procedures, and prescribe forms to enforce and administer
8-56 Sections 711.003, 711.008, 711.010, 711.011, 711.021-711.035,
8-57 711.038, 711.041, 711.042, 711.061, and 711.062 relating to
8-58 cemeteries that are not perpetual care cemeteries.

8-59 SECTION 33. Subchapter D, Chapter 711, Health and Safety
8-60 Code, is amended by adding Sections 711.053-711.056 to read as
8-61 follows:

8-62 Sec. 711.053. DEFINITION. In this subchapter,
8-63 "commissioner" means the banking commissioner of Texas.

8-64 Sec. 711.054. ENFORCEMENT BY FINANCE COMMISSION OF TEXAS.
8-65 The Finance Commission of Texas may use remedies available under
8-66 Chapter 712 to enforce a section listed under Section 711.012(a)
8-67 relating to perpetual care cemeteries.

8-68 Sec. 711.055. ENFORCEMENT BY COMMISSIONER. (a) Chapter
8-69 2001, Government Code, applies to a proceeding under this section.

9-1 (b) After notice and opportunity for hearing, the
 9-2 commissioner may impose an administrative penalty on a person who:

9-3 (1) violates this chapter or a final order of the
 9-4 commissioner or rule of the Finance Commission of Texas and does not
 9-5 correct the violation before the 31st day after the date the person
 9-6 receives written notice of the violation from the Texas Department
 9-7 of Banking; or

9-8 (2) engages in a pattern of violations, as determined
 9-9 by the commissioner.

9-10 (c) The amount of the penalty for each violation may not
 9-11 exceed \$1,000 for each day the violation occurs.

9-12 (d) In determining the amount of the penalty, the
 9-13 commissioner shall consider the seriousness of the violation, the
 9-14 person's history of violations, and the person's good faith in
 9-15 attempting to comply with this chapter. The commissioner may
 9-16 collect the penalty in the same manner that a money judgment is
 9-17 enforced in district court.

9-18 (e) In addition to any penalty that may be imposed under
 9-19 Subsection (b), the commissioner may bring a civil action against a
 9-20 person to enjoin a violation described in Subsection (b) that has
 9-21 not been corrected within 30 days after receipt by the person of
 9-22 written notice of the violation from the commissioner. The civil
 9-23 action may be brought in the district court of the county in which
 9-24 the cemetery is operated.

9-25 (f) The commissioner may issue an order to cease and desist
 9-26 if a violation described in Subsection (b) has not been corrected
 9-27 within 30 days after receipt by the person of written notice of the
 9-28 violation from the commissioner. Any order proposed under this
 9-29 subsection shall be served on the person, shall state the grounds
 9-30 for the proposed order with reasonable certainty, and shall state
 9-31 the proposed effective date, which may not be less than 15 days
 9-32 after receipt by the person. Unless the person requests a hearing
 9-33 within 15 days after the receipt, the order is effective as
 9-34 proposed.

9-35 Sec. 711.056. PATTERN OF WILFUL DISREGARD. (a) If after a
 9-36 hearing conducted as provided by Chapter 2001, Government Code, the
 9-37 trier of fact finds that a violation of this chapter or a rule of the
 9-38 Finance Commission of Texas establishes a pattern of wilful
 9-39 disregard for the requirements of this chapter or rules of the
 9-40 finance commission, the trier of fact shall recommend to the
 9-41 commissioner that the maximum administrative penalty permitted
 9-42 under Section 711.055 be imposed on the person committing the
 9-43 violation or that the commissioner cancel or not renew the person's
 9-44 permit under Chapter 154, Finance Code, if the person holds such a
 9-45 permit.

9-46 (b) For the purposes of this section, violations corrected
 9-47 as provided by Section 711.055 may be included in determining
 9-48 whether a pattern of wilful disregard for the requirements of this
 9-49 chapter or rules of the finance commission exists.

9-50 SECTION 34. Section 712.002, Health and Safety Code, is
 9-51 amended to read as follows:

9-52 Sec. 712.002. EXEMPTIONS FROM CHAPTER. This chapter does
 9-53 not apply to:

9-54 (1) a family, fraternal, or community cemetery that is
 9-55 not larger than 10 acres;

9-56 (2) an unincorporated association of plot owners not
 9-57 operated for profit;

9-58 (3) ~~a nonprofit corporation organized by plot owners,~~
 9-59 ~~or~~

9-60 ~~[(4)] a church, a religious society or denomination,~~
 9-61 ~~or an entity solely administering the temporalities of a church or~~
 9-62 ~~religious society or denomination; or~~

9-63 (4) a public cemetery owned by this state, a county, or
 9-64 a municipality.

9-65 SECTION 35. Section 712.008, Health and Safety Code, is
 9-66 amended to read as follows:

9-67 Sec. 712.008. RULES. (a) The Finance Commission of Texas
 9-68 may adopt rules to enforce and administer this chapter, including
 9-69 rules establishing fees to defray the costs of enforcing and

10-1 administering this chapter.

10-2 (b) The Finance Commission of Texas shall adopt rules
 10-3 establishing reasonable standards for:

10-4 (1) timely placement of burial markers or monuments in
 10-5 a perpetual care cemetery; and

10-6 (2) timely response to consumer complaints made to a
 10-7 corporation that operates a perpetual care cemetery.

10-8 SECTION 36. Section 712.025, Health and Safety Code, is
 10-9 amended to read as follows:

10-10 Sec. 712.025. USE OF FUND INCOME. Fund income ~~[may be~~
 10-11 ~~applied in the manner the directors of a corporation determine to be~~
 10-12 ~~for the best interest of the corporation's perpetual care cemetery~~
 10-13 ~~and] may be used only to provide ~~[for]~~ the perpetual care described~~
 10-14 ~~by the ~~[resolution, bylaw, or other action or]~~ instrument that~~
 10-15 ~~established the fund, including the general care and maintenance of~~
 10-16 ~~the property entitled to perpetual care in the perpetual care~~
 10-17 ~~cemetery.~~

10-18 SECTION 37. Sections 712.028(a) and (c), Health and Safety
 10-19 Code, are amended to read as follows:

10-20 (a) A corporation shall deposit in its fund an amount that
 10-21 is at least:

10-22 (1) the greater of:

10-23 (A) \$1.75 ~~[\$1.50]~~ a square foot of ground area
 10-24 conveyed as perpetual care property; or

10-25 (B) 15 ~~[10]~~ percent of the total purchase price
 10-26 of that ground area;

10-27 (2) the greater of:

10-28 (A) \$105 ~~[\$90]~~ for each crypt interment right for
 10-29 mausoleum interment or lawn crypt interment conveyed as perpetual
 10-30 care property, or \$60 ~~[\$50]~~ for each crypt interment right if that
 10-31 crypt is accessible only through another crypt; or

10-32 (B) seven ~~[five]~~ percent of the total purchase
 10-33 price of that crypt interment right; and

10-34 (3) the greater of:

10-35 (A) \$35 ~~[\$30]~~ for each niche interment right for
 10-36 columbarium interment conveyed; or

10-37 (B) 15 ~~[10]~~ percent of the total purchase price
 10-38 of that niche interment right.

10-39 (c) If a plot owner exchanges a plot for another plot in a
 10-40 corporation's perpetual care cemetery, the amount to be deposited
 10-41 in the corporation's fund in respect of the plot received by the
 10-42 plot owner in the exchange may be reduced by the amount deposited in
 10-43 the fund in respect of the plot contributed by the plot owner in the
 10-44 exchange. The amount required to be deposited with respect to an
 10-45 exchanged plot is the amount required at the time the plot owner
 10-46 originally contracted to purchase the plot.

10-47 SECTION 38. Section 715.003, Health and Safety Code, is
 10-48 amended to read as follows:

10-49 Sec. 715.003. PARTIES TO ACTION. An action commenced under
 10-50 this chapter shall be brought by the incorporators of the nonprofit
 10-51 corporation on behalf of the nonprofit corporation. The necessary
 10-52 parties to the action on which citation shall be served under
 10-53 Section 715.006 are:

10-54 (1) the record owners of the real property comprising
 10-55 the historic cemetery;

10-56 (2) the owners of plots in the cemetery, who may be
 10-57 designated as a class in the petition; ~~[and]~~

10-58 (3) the Texas Historical Commission; and

10-59 (4) the Texas Funeral Service Commission.

10-60 SECTION 39. Section 715.006(a), Health and Safety Code, is
 10-61 amended to read as follows:

10-62 (a) Before the 31st day after the date an action is
 10-63 commenced by a nonprofit corporation under this chapter, the
 10-64 nonprofit corporation shall cause citation to be issued and served
 10-65 by certified mail, return receipt requested, on:

10-66 (1) the record owners of the real property comprising
 10-67 the cemetery at their last known addresses;

10-68 (2) the owners of plots in the cemetery at their last
 10-69 known addresses;

11-1 (3) the Texas Historical Commission at its office in
11-2 Austin, Texas;
11-3 (4) the Texas Funeral Service Commission; and
11-4 (5) ~~[(4)]~~ the county auditor of the county in which
11-5 the cemetery is located.

11-6 SECTION 40. The following laws are repealed:

- 11-7 (1) Section 651.1575, Occupations Code;
- 11-8 (2) Section 651.302(c), Occupations Code;
- 11-9 (3) Section 651.455(b), Occupations Code; and
- 11-10 (4) Section 651.506(j), Occupations Code.

11-11 SECTION 41. On September 1, 2003:

11-12 (1) all functions and activities related to Chapter
11-13 711, Health and Safety Code, performed by the Texas Department of
11-14 Health immediately before that date are transferred to the Texas
11-15 Funeral Service Commission;

11-16 (2) a rule or form of the Texas Department of Health
11-17 related to Chapter 711, Health and Safety Code, is a rule or form of
11-18 the Texas Funeral Service Commission and remains in effect until
11-19 amended or replaced by that commission;

11-20 (3) a reference in law or an administrative rule to the
11-21 Texas Department of Health that relates to Chapter 711, Health and
11-22 Safety Code, means the Texas Funeral Service Commission; and

11-23 (4) a complaint, investigation, or other proceeding
11-24 before the Texas Department of Health that is related to Chapter
11-25 711, Health and Safety Code, is transferred without change in
11-26 status to the Texas Funeral Service Commission, and the Texas
11-27 Funeral Service Commission assumes, as appropriate and without a
11-28 change in status, the position of the Texas Department of Health in
11-29 an action or proceeding to which the Texas Department of Health is a
11-30 party.

11-31 SECTION 42. On March 1, 2004, Subchapter N, Chapter 651,
11-32 Occupations Code, is repealed.

11-33 SECTION 43. A cemetery is not required to hold a license
11-34 under Chapter 651, Occupations Code, as amended by this Act, until
11-35 March 1, 2004.

11-36 SECTION 44. The change in law made by this Act to Section
11-37 712.028, Health and Safety Code, applies only to a contract for the
11-38 purchase of a plot in a perpetual care cemetery entered into, or the
11-39 exchange of a plot in a perpetual care cemetery made, on or after
11-40 the effective date of this Act. A contract for the purchase of a
11-41 plot in a perpetual care cemetery entered into, or the exchange of a
11-42 plot in a perpetual care cemetery made, before the effective date of
11-43 this Act is governed by the law as it existed immediately before
11-44 that effective date, and that law is continued in effect for that
11-45 purpose.

11-46 SECTION 45. This Act takes effect September 1, 2003.

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