

1-1 By: Carona S.B. No. 306
1-2 (In the Senate - Filed January 28, 2003; February 5, 2003,
1-3 read first time and referred to Committee on Government
1-4 Organization; April 8, 2003, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 7, Nays 0;
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1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 306 By: Armbrister

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

1-10 relating to the cremation of human remains and the operation of
1-11 crematories and certain related entities; providing a penalty.

1-12 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-13 SECTION 1. The heading of Subtitle C, Title 8, Health and
1-14 Safety Code, is amended to read as follows:

1-15 SUBTITLE C. CEMETERIES AND CREMATORIES

1-16 SECTION 2. Subtitle C, Title 8, Health and Safety Code, is
1-17 amended by adding Chapter 716 to read as follows:

1-18 CHAPTER 716. CREMATORIES

1-19 SUBCHAPTER A. GENERAL PROVISIONS

1-20 Sec. 716.001. DEFINITIONS. In this chapter:

1-21 (1) "Authorizing agent" means a person authorized to
1-22 dispose of a decedent's remains under Section 711.002.

1-23 (2) "Cemetery" has the meaning assigned by Section
1-24 711.001.

1-25 (3) "Commission" means the Texas Funeral Service
1-26 Commission.

1-27 (4) "Cremated remains" means the recoverable human
1-28 remains after the completion of the cremation process. The term may
1-29 include the residue of any nonhuman matter cremated with the
1-30 deceased human body including casket material, bridgework,
1-31 eyeglasses, or other material.

1-32 (5) "Cremation" means the irreversible process of
1-33 reducing human remains to bone fragments through direct flame,
1-34 extreme heat, and evaporation. The term may include pulverization,
1-35 which is the process of reducing identifiable bone fragments after
1-36 cremation and processing granulated particles by manual or
1-37 mechanical means.

1-38 (6) "Cremation chamber" means an enclosed retort used
1-39 exclusively for cremation of human remains.

1-40 (7) "Cremation container" means a casket or other
1-41 container designed to transport a deceased human body and for
1-42 placement in a cremation chamber during cremation.

1-43 (8) "Cremation interment container" means a rigid
1-44 outer container composed of concrete, steel, fiberglass, or similar
1-45 material used for the ground burial of cremated remains that meets a
1-46 cemetery's specifications.

1-47 (9) "Crematory" means a structure containing a retort
1-48 used or intended to be used for cremation of human remains.

1-49 (10) "Crematory establishment" means a business that
1-50 operates a crematory for which a license is required under
1-51 Subchapter N, Chapter 651, Occupations Code.

1-52 (11) "Funeral director" has the meaning assigned by
1-53 Section 651.001, Occupations Code.

1-54 (12) "Funeral establishment" has the meaning assigned
1-55 by Section 651.001, Occupations Code.

1-56 (13) "Scattering area" means an area designated for
1-57 scattering cremated remains. The term includes dedicated cemetery
1-58 property on which cremated remains may be:

1-59 (A) mixed with or placed on top of soil or ground
1-60 cover; or

1-61 (B) commingled and buried in an underground

2-1 receptacle.

2-2 (14) "Temporary container" means a receptacle
 2-3 composed of cardboard, plastic, or similar material designed to
 2-4 temporarily store cremated remains until the remains are placed in
 2-5 an urn or other permanent container.

2-6 (15) "Urn" means a container designed to permanently
 2-7 store cremated remains.

2-8 Sec. 716.002. CREMATION RULES. The commission may adopt
 2-9 rules consistent with this chapter and Chapter 651, Occupations
 2-10 Code, to govern the cremation of human remains.

2-11 Sec. 716.003. LOCATION OF CREMATORY. (a) A crematory may
 2-12 be constructed on or adjacent to a perpetual care cemetery or
 2-13 adjacent to a funeral establishment.

2-14 (b) A crematory, other than a crematory registered with the
 2-15 commission on September 1, 2003, must:

2-16 (1) be adjacent to a perpetual care cemetery or
 2-17 funeral establishment; and

2-18 (2) be owned or operated by the person that owns or
 2-19 operates the perpetual care cemetery or funeral establishment.

2-20 (c) In this section, "adjacent to" means that a part of the
 2-21 property on which the crematory is to be constructed has a common
 2-22 boundary with:

2-23 (1) the perpetual care cemetery or property on which
 2-24 the funeral establishment is located; or

2-25 (2) a public easement, a utility easement, or a
 2-26 railroad right-of-way that has a common boundary with the perpetual
 2-27 care cemetery or property on which the funeral establishment is
 2-28 located.

2-29 Sec. 716.004. WAITING PERIOD FOR CREMATION. (a) A
 2-30 crematory establishment may not cremate human remains within 48
 2-31 hours of the time of death indicated on a death certificate unless
 2-32 the waiting period is waived in writing by:

2-33 (1) a justice of the peace or medical examiner of the
 2-34 county in which the death occurred; or

2-35 (2) a court order.

2-36 (b) Unless a crematory establishment is also licensed as a
 2-37 funeral establishment, the crematory establishment may not accept
 2-38 any deceased human remains for cremation until the cremation is
 2-39 authorized in writing by a justice of the peace or medical examiner
 2-40 of the county in which the death occurred.

2-41 Sec. 716.005. CREMATORY ESTABLISHMENT PROCEDURES. A
 2-42 crematory establishment may adopt procedures not inconsistent with
 2-43 this chapter for the management and operation of a crematory.

2-44 Sec. 716.006. APPLICABILITY OF CHAPTER TO OTHER LAW. This
 2-45 chapter may not be construed to require a funeral director to
 2-46 perform any act not otherwise authorized by other law.

2-47 [Sections 716.007-716.050 reserved for expansion]

2-48 SUBCHAPTER B. AUTHORIZATION REQUIREMENTS

2-49 Sec. 716.051. CREMATION AUTHORIZATION. Except as otherwise
 2-50 provided in this chapter, a crematory establishment may not
 2-51 cremate deceased human remains until it receives:

2-52 (1) a cremation authorization form signed by an
 2-53 authorizing agent; and

2-54 (2) a death certificate or other death record that
 2-55 indicates the deceased human remains may be cremated.

2-56 Sec. 716.052. CREMATION AUTHORIZATION FORM. (a) A
 2-57 cremation authorization form must:

2-58 (1) identify the deceased person and the time and date
 2-59 of death;

2-60 (2) include the name and address of the funeral
 2-61 director or other person that contracted to provide for the
 2-62 cremation;

2-63 (3) identify the authorizing agent and the
 2-64 relationship between the authorizing agent and the deceased person;

2-65 (4) include a statement by the authorizing agent that:

2-66 (A) the authorizing agent has the right to
 2-67 authorize the cremation of the deceased person and is not aware of
 2-68 any person with a superior or equal priority right; or

2-69 (B) if another person has an equal priority right

3-1 to authorize cremation, the authorizing agent:

3-2 (i) has made all reasonable efforts but
3-3 failed to contact that person and believes the person would not
3-4 object to the cremation; and

3-5 (ii) agrees to indemnify and hold harmless
3-6 the funeral establishment and the crematory establishment for any
3-7 liability arising from performing the cremation without the
3-8 person's authorization;

3-9 (5) authorize the crematory establishment to cremate
3-10 the human remains;

3-11 (6) declare the human remains do not contain a
3-12 pacemaker or any other material or implant that may potentially be
3-13 hazardous or cause damage to the cremation chamber or the person
3-14 performing the cremation;

3-15 (7) include the name of the funeral establishment or
3-16 other person authorized to receive the cremated remains from the
3-17 crematory establishment;

3-18 (8) detail the manner of permanent disposition of the
3-19 cremated remains, if known;

3-20 (9) list any items of value delivered to the crematory
3-21 establishment along with the human remains and include instructions
3-22 on the handling of the items;

3-23 (10) specify whether the authorizing agent has
3-24 arranged for a viewing of the deceased person or service with the
3-25 deceased person present before cremation and the date and time of
3-26 the viewing or service; and

3-27 (11) include the signature of the authorizing agent
3-28 attesting to the accuracy of all representations contained on the
3-29 cremation authorization form.

3-30 (b) A cremation authorization form must include a written
3-31 notice to the authorizing agent that:

3-32 (1) the authorizing agent assumes responsibility for
3-33 the disposition of the cremated remains; and

3-34 (2) the crematory establishment may:

3-35 (A) release to the authorizing agent, in person,
3-36 the cremated remains of the deceased person;

3-37 (B) ship the cremated remains to the authorizing
3-38 agent if the agent authorizes shipment and provides a shipping
3-39 address on the authorization form; or

3-40 (C) dispose of the cremated remains in accordance
3-41 with this chapter not earlier than the 121st day following the date
3-42 of cremation if the cremated remains have not been claimed by the
3-43 authorizing agent.

3-44 (c) A funeral director or other representative of a funeral
3-45 establishment that contracts to provide for the cremation of
3-46 deceased human remains must sign the cremation authorization form.

3-47 (d) A crematory establishment shall provide a cremation
3-48 authorization form to an authorizing agent on request.

3-49 Sec. 716.053. DELEGATION OF CREMATION AUTHORIZATION
3-50 AUTHORITY. (a) An authorizing agent may delegate to a
3-51 representative in writing the authority to execute a cremation
3-52 authorization form.

3-53 (b) An authorizing agent's written delegation of authority
3-54 must be notarized and include:

3-55 (1) the name and address of the authorizing agent and
3-56 the relationship of the authorizing agent to the deceased person;

3-57 (2) the name and address of the representative; and

3-58 (3) an acknowledgment by the authorizing agent that
3-59 the representative may serve as the authorizing agent and execute
3-60 the cremation authorization form.

3-61 (c) A crematory establishment is not liable in a civil
3-62 action for relying on a cremation authorization form executed by a
3-63 representative of the authorizing agent to whom authority is
3-64 delegated in accordance with this section.

3-65 [Sections 716.054-716.100 reserved for expansion]

3-66 SUBCHAPTER C. RECEIPT AND IDENTIFICATION OF REMAINS

3-67 Sec. 716.101. UNIDENTIFIED HUMAN REMAINS. A crematory
3-68 establishment may not accept for cremation unidentified human
3-69 remains.

Sec. 716.102. RECEIPT ACKNOWLEDGING ACCEPTANCE OF REMAINS.

(a) A crematory establishment shall furnish to a representative of a funeral establishment who delivers deceased human remains to the crematory establishment a receipt that includes:

(1) the signature and printed name of the representative who delivered the remains;

(2) the date and time of the delivery;

(3) the type of cremation container in which the remains were delivered;

(4) the name of the funeral establishment or other entity that contracted to provide for the cremation;

(5) the name of the individual who received the human remains on behalf of the crematory; and

(6) the name of the deceased person.

(b) The crematory establishment shall retain a copy of the receipt required by Subsection (a) in the crematory establishment's records.

Sec. 716.103. IDENTIFICATION RESPONSIBILITY OF CREMATORY.

A crematory establishment shall place on the exterior of a cremation container a label with the deceased person's name as provided by the authorizing agent unless the crematory establishment knows the name is incorrect.

Sec. 716.104. IDENTIFICATION RESPONSIBILITIES OF FUNERAL DIRECTOR OR ESTABLISHMENT.

(a) A funeral director or funeral establishment shall provide a signed written statement to a crematory establishment that the human remains delivered to the crematory establishment were positively identified as the deceased person listed on the cremation authorization form by the authorizing agent or a representative of the authorizing agent delegated as provided by Section 716.053.

(b) An authorizing agent or the delegated representative of the agent may identify a deceased person in person or by photograph. The authorizing agent may waive the right of identification.

[Sections 716.105-716.150 reserved for expansion]

SUBCHAPTER D. CREMATION PROCEDURES

Sec. 716.151. CREMATION CONTAINERS. (a) Human remains must be placed in a cremation container that:

(1) is made of combustible materials suitable for cremation;

(2) provides a complete covering of the body;

(3) is resistant to leakage or spillage;

(4) is rigid for easy handling; and

(5) protects the health and safety of crematory personnel.

(b) A crematory establishment may not remove human remains from a cremation container and must cremate the cremation container with the human remains.

(c) Except as provided by this section, a crematory establishment may not:

(1) require that deceased human remains be placed in a casket before cremation or that remains be cremated in a casket; or

(2) refuse to accept for cremation remains that have not been placed in a casket.

Sec. 716.152. CREMATION PROCESS. (a) A crematory establishment is not required to accept a cremation container that evidences leakage of human body fluids.

(b) A person other than a crematory establishment employee, the authorizing agent, or a representative delegated as provided by Section 716.053 and approved by the crematory establishment may not be present in a crematory area during:

(1) the cremation of deceased human remains; or

(2) the removal of the remains from the cremation chamber.

(c) Immediately before placing deceased human remains in a cremation chamber, a crematory establishment employee must verify and remove the identification label from the cremation container and place the label near the cremation chamber control panel until the cremation process is complete.

(d) To the extent practicable, the crematory establishment

5-1 shall remove all recoverable cremation residue from the cremation
 5-2 chamber following cremation and pulverize any bone fragments as
 5-3 necessary. The crematory establishment shall remove and dispose of
 5-4 any other material included with the residue.

5-5 Sec. 716.153. SIMULTANEOUS CREMATION. (a) A crematory
 5-6 establishment may not simultaneously cremate the deceased human
 5-7 remains of more than one person in the same cremation chamber unless
 5-8 authorized in writing by the authorizing agent of each deceased
 5-9 person.

5-10 (b) A crematory establishment is not civilly or criminally
 5-11 liable for commingling human remains during cremation if each
 5-12 authorizing agent provides a signed written statement authorizing
 5-13 the simultaneous cremation.

5-14 Sec. 716.154. PACEMAKERS. (a) A crematory establishment
 5-15 may not knowingly cremate deceased human remains containing a
 5-16 pacemaker or other potentially hazardous implant.

5-17 (b) An authorizing agent who knows of the existence of a
 5-18 pacemaker or other potentially hazardous implant in deceased human
 5-19 remains shall notify the funeral director and crematory
 5-20 establishment. The authorizing agent shall ensure that the
 5-21 pacemaker or other potentially hazardous implant is removed from
 5-22 the remains before cremation.

5-23 (c) If an authorizing agent discloses to the funeral
 5-24 director on the cremation authorization form the presence of a
 5-25 pacemaker or other potentially hazardous implant in the deceased
 5-26 human remains, the funeral director shall ensure that the pacemaker
 5-27 or other potentially hazardous implant is removed from the remains
 5-28 before delivering the remains to the crematory establishment.

5-29 (d) An authorizing agent or funeral director that violates
 5-30 Subsection (b) or (c) is liable to the crematory establishment in a
 5-31 civil action for any damages resulting from cremation of the
 5-32 remains containing the pacemaker or other potentially hazardous
 5-33 implant.

5-34 Sec. 716.155. TEMPORARY CONTAINER OR URN. (a) A crematory
 5-35 establishment shall place the cremated remains with proper
 5-36 identification in a temporary container or urn unless otherwise
 5-37 instructed in writing by the authorizing agent.

5-38 (b) The crematory establishment may not commingle the
 5-39 cremated remains with other cremated remains or include any other
 5-40 object or material in the temporary container or urn unless
 5-41 authorized in writing by the authorizing agent unless otherwise
 5-42 provided by this chapter.

5-43 (c) A crematory establishment shall place a label on a
 5-44 temporary container that:

5-45 (1) discloses the temporary container is not intended
 5-46 for the permanent storage of cremated remains in a niche, crypt,
 5-47 cremation interment container, or interment space;

5-48 (2) includes the deceased person's name; and

5-49 (3) includes the name of the crematory establishment.

5-50 (d) A crematory establishment shall release all cremated
 5-51 remains to an authorizing agent, a representative delegated as
 5-52 provided by Section 716.053, or an employee of the funeral
 5-53 establishment if the authorizing agent authorized the release on
 5-54 the authorization form. Any cremated remains that do not fit in a
 5-55 temporary container or urn must be returned to the authorizing
 5-56 agent, representative, or employee in a separate temporary
 5-57 container that meets the requirements of this section.

5-58 (e) A crematory establishment may ship cremated remains
 5-59 only by a method with an internal tracking system that provides a
 5-60 receipt signed by the person accepting delivery. The outside of the
 5-61 container in which the cremated remains are placed for shipment
 5-62 must display a label that includes:

5-63 (1) the deceased person's name;

5-64 (2) the name of the crematory establishment; and

5-65 (3) a warning that the container is temporary, if a
 5-66 temporary container is used.

5-67 Sec. 716.156. RELEASE OF REMAINS. (a) A crematory
 5-68 establishment shall:

5-69 (1) release the cremated remains to a representative

6-1 of the funeral establishment that delivered the deceased human
 6-2 remains to the crematory establishment;

6-3 (2) release the cremated remains to the person
 6-4 authorized to receive the remains on the cremation authorization
 6-5 form; or

6-6 (3) ship the remains to the shipping address provided
 6-7 by the authorizing agent on the cremation authorization form not
 6-8 later than the 30th day following the date of cremation.

6-9 (b) A crematory establishment shall furnish to a person who
 6-10 receives the cremated remains a receipt that includes:

6-11 (1) the date and time of release;

6-12 (2) the printed name of the person who receives the
 6-13 cremated remains;

6-14 (3) the name of the funeral establishment or other
 6-15 entity who contracted to provide for the cremation;

6-16 (4) the printed name of the person who released the
 6-17 cremated remains on behalf of the crematory establishment; and

6-18 (5) the name of the deceased person.

6-19 (c) A crematory establishment shall retain a copy of the
 6-20 receipt required by this section in the crematory establishment's
 6-21 records.

6-22 [Sections 716.157-716.200 reserved for expansion]

6-23 SUBCHAPTER E. DISPUTES AND LIABILITY

6-24 Sec. 716.201. CREMATION DISPUTE. (a) Until authorized by
 6-25 a valid court order, a crematory establishment, funeral
 6-26 establishment, cemetery, or other person may refuse to accept
 6-27 deceased human remains or to perform a cremation if the crematory
 6-28 establishment, funeral establishment, cemetery, or person is aware
 6-29 of:

6-30 (1) a dispute that has not been resolved or settled
 6-31 concerning the cremation of the remains;

6-32 (2) a reasonable basis for questioning any
 6-33 representation made by the authorizing agent; or

6-34 (3) any other lawful reason for refusing to accept or
 6-35 cremate the remains.

6-36 (b) A crematory establishment, funeral establishment,
 6-37 cemetery, or other person aware of any dispute concerning the
 6-38 release or disposition of the cremated remains may refuse to
 6-39 release the remains until:

6-40 (1) the dispute has been resolved or settled; or

6-41 (2) authorized by a valid court order to release or
 6-42 dispose of the remains.

6-43 (c) A crematory establishment, funeral establishment,
 6-44 cemetery, or other person is not liable in a civil action or
 6-45 criminal prosecution for refusing to accept or cremate human
 6-46 remains in accordance with Subsection (a) or for refusing to
 6-47 release or dispose of or releasing or disposing of cremated remains
 6-48 in accordance with Subsection (b).

6-49 Sec. 716.202. LIABILITY OF AUTHORIZING AGENT. An
 6-50 authorizing agent who signs a cremation authorization form is
 6-51 subject to Section 711.002(f) and attests to the truthfulness of
 6-52 the facts set forth in the form, including the identity of the
 6-53 deceased person and the agent's authority under this chapter and
 6-54 Section 711.002.

6-55 Sec. 716.203. LIABILITY OF CREMATORY ESTABLISHMENT,
 6-56 FUNERAL ESTABLISHMENT, FUNERAL DIRECTOR, CEMETERY, OR OTHER
 6-57 PERSON. (a) A crematory establishment, funeral establishment,
 6-58 funeral director, cemetery, or other person that contracts to
 6-59 provide for a cremation, accepts human remains, cremates human
 6-60 remains, or releases or disposes of the cremated remains as
 6-61 provided on a cremation authorization form is not criminally or
 6-62 civilly liable for performing the actions authorized.

6-63 (b) A crematory establishment or funeral establishment is
 6-64 not criminally or civilly liable for disposing of cremated remains
 6-65 after the 120th day after the date of cremation in accordance with
 6-66 this chapter if:

6-67 (1) the authorizing agent did not authorize shipment
 6-68 of the remains or provide a shipping address on the authorization
 6-69 form; and

7-1 (2) the authorizing agent did not claim the remains
7-2 before the 121st day following the date of cremation.

7-3 (c) A crematory establishment is not liable in a civil
7-4 action or criminal prosecution for any valuables delivered with
7-5 human remains if the crematory establishment exercises reasonable
7-6 care in protecting the valuables.

7-7 (d) A crematory establishment, funeral establishment,
7-8 funeral director, cemetery, or other person is not liable in a civil
7-9 action for:

7-10 (1) the acts of a crematory establishment employee
7-11 that are outside the scope of the employee's authority or
7-12 responsibility; or

7-13 (2) representations made by the authorizing agent or
7-14 the agent's representative in the cremation authorization form.

7-15 [Sections 716.204-716.250 reserved for expansion]

7-16 SUBCHAPTER F. RECORDS

7-17 Sec. 716.251. CREMATORY ESTABLISHMENT RECORDS. (a) A
7-18 crematory establishment shall maintain a record at its place of
7-19 business of each cremation. The record must contain:

7-20 (1) the name of the deceased person;

7-21 (2) the date of the cremation;

7-22 (3) the final disposition of the cremated remains; and

7-23 (4) any other document required by this chapter.

7-24 (b) A record must be kept on file at least until the fifth
7-25 anniversary of the cremation.

7-26 [Sections 716.252-716.300 reserved for expansion]

7-27 SUBCHAPTER G. DISPOSITION OF REMAINS

7-28 Sec. 716.301. TRANSPORT OF CREMATED REMAINS. On delivery
7-29 of the cremated remains by a crematory establishment, an
7-30 authorizing agent or the representative delegated by the
7-31 authorizing agent as provided by Section 716.053 may transport the
7-32 remains without a permit in any manner in this state and finally
7-33 dispose of the cremated remains in accordance with this subchapter.

7-34 Sec. 716.302. DISPOSITION OF CREMATED REMAINS. (a) An
7-35 authorizing agent shall provide to a crematory establishment a
7-36 signed written statement disclosing the final disposition of the
7-37 cremated remains, if known. The crematory establishment shall
7-38 retain a copy of the statement in the crematory establishment's
7-39 records.

7-40 (b) The authorizing agent is responsible for disposing of
7-41 cremated remains.

7-42 (c) Not earlier than the 121st day following the date of
7-43 cremation, if the authorizing agent or the agent's representative
7-44 has not specified the final disposition of or claimed the cremated
7-45 remains, the crematory establishment or funeral establishment, if
7-46 the cremated remains have been released to an employee of the
7-47 funeral establishment in accordance with the authorization form,
7-48 may dispose of the cremated remains in accordance with this
7-49 subchapter. The crematory establishment or funeral establishment,
7-50 as applicable, shall retain a record of the disposition in the
7-51 establishment's records.

7-52 (d) An authorizing agent is responsible for all reasonable
7-53 expenses incurred in disposing of the cremated remains under
7-54 Subsection (c).

7-55 (e) A person may dispose of cremated remains only:

7-56 (1) in a crypt, niche, grave, or scattering area of a
7-57 dedicated cemetery;

7-58 (2) by scattering the remains over uninhabited public
7-59 land, sea, or other public waterways in accordance with Section
7-60 716.304; or

7-61 (3) on private property as directed by the authorizing
7-62 agent with the written consent of the property owner in accordance
7-63 with Section 716.304.

7-64 Sec. 716.303. COMMINGLING OF REMAINS. Unless authorized in
7-65 writing by the authorizing agent, a person may not:

7-66 (1) dispose of or scatter cremated remains in a manner
7-67 or at a location that commingles the remains with other cremated
7-68 remains, except by air over a scattering area or by sea; or

7-69 (2) place the cremated remains of more than one

8-1 deceased person in the same urn or other container.

8-2 Sec. 716.304. SCATTERING REMAINS. A person may scatter
8-3 cremated remains over uninhabited public land, over a public
8-4 waterway or sea, or on the private property of a consenting owner,
8-5 if the remains are reduced to a particle size of one-eighth inch or
8-6 less. Unless the container is biodegradable, the cremated remains
8-7 must be removed from the container before being scattered.

8-8 [Sections 716.305-716.350 reserved for expansion]

8-9 SUBCHAPTER H. PENALTY

8-10 Sec. 716.351. CRIMINAL PENALTY. (a) A person commits an
8-11 offense if the person:

8-12 (1) cremates human remains without receipt of a
8-13 cremation authorization form signed by an authorizing agent;

8-14 (2) signs a cremation authorization form with actual
8-15 knowledge that the form contains false or incorrect information; or

8-16 (3) represents to the public that the person may
8-17 cremate human remains without being licensed as provided by
8-18 Subchapter N, Chapter 651, Occupations Code.

8-19 (b) An offense under Subsection (a) is a Class B
8-20 misdemeanor.

8-21 SECTION 3. Section 651.5061, Occupations Code, is amended
8-22 to read as follows:

8-23 Sec. 651.5061. WAIVER OF HEARING BY FUNERAL OR CREMATORY
8-24 ESTABLISHMENT. A funeral or crematory establishment alleged to
8-25 have violated this chapter or a rule adopted under this chapter may
8-26 wave the right to a hearing as provided by Section 651.506 by
8-27 written notification to the commission.

8-28 SECTION 4. Subchapter K, Chapter 651, Occupations Code, is
8-29 amended by adding Section 651.508 to read as follows:

8-30 Sec. 651.508. ENFORCEMENT OF LAW REGULATING CREMATORIES.
8-31 For purposes of this subchapter, a person regulated under this
8-32 chapter that violates Chapter 716, Health and Safety Code, violates
8-33 this chapter.

8-34 SECTION 5. Subchapter L, Chapter 651, Occupations Code, is
8-35 amended by adding Section 651.559 to read as follows:

8-36 Sec. 651.559. ENFORCEMENT OF LAW REGULATING CREMATORIES.
8-37 For purposes of this subchapter, a person regulated under this
8-38 chapter that violates Chapter 716, Health and Safety Code, violates
8-39 this chapter.

8-40 SECTION 6. Section 651.601, Occupations Code, is amended by
8-41 adding Subsection (a-1) to read as follows:

8-42 (a-1) The commission may bring an action for appropriate
8-43 injunctive relief against a crematory establishment that violates
8-44 this chapter or a rule adopted under this chapter.

8-45 SECTION 7. The heading to Subchapter N, Chapter 651,
8-46 Occupations Code, is amended to read as follows:

8-47 SUBCHAPTER N. REGISTRATION AND LICENSING REQUIREMENTS: CEMETERIES
8-48 AND CREMATORIES

8-49 SECTION 8. Section 651.651, Occupations Code, is amended to
8-50 read as follows:

8-51 Sec. 651.651. DEFINITIONS [DEFINITION]. In this
8-52 subchapter:

8-53 (1) "Cremation" means the irreversible process of
8-54 reducing human remains to bone fragments through direct flame,
8-55 extreme heat, and evaporation. The term may include pulverization,
8-56 which is the process of reducing identifiable bone fragments after
8-57 cremation and processing granulated particles by manual or
8-58 mechanical means.

8-59 (2) "Crematory establishment" means a business
8-60 licensed under this subchapter to operate a crematory and to
8-61 perform cremation services.

8-62 (3) [7] "Perpetual [~~perpetual~~] care cemetery" means a
8-63 cemetery that operates as [person who notifies the Texas Department
8-64 of Banking of its intent to operate] a perpetual care cemetery in
8-65 accordance with Chapter 712 [in this state under Section 712.0031],
8-66 Health and Safety Code.

8-67 SECTION 9. Subsection (b), Section 651.652, Occupations
8-68 Code, is amended to read as follows:

8-69 (b) This subchapter does not apply to the maintenance of a

9-1 cemetery [~~or crematory~~], including maintenance of any goods or
9-2 services provided under Chapter 711 or 712, Health and Safety Code.

9-3 SECTION 10. The heading to Section 651.653, Occupations
9-4 Code, is amended to read as follows:

9-5 Sec. 651.653. CEMETERY [~~OR CREMATORY~~] REGISTRATION
9-6 REQUIREMENTS.

9-7 SECTION 11. Subsections (a), (b), and (d), Section 651.653,
9-8 Occupations Code, are amended to read as follows:

9-9 (a) A person may not conduct a cemetery [~~or crematory~~]
9-10 business in this state unless a person [~~an individual~~] who is the
9-11 owner or operator of the cemetery [~~or crematory~~] registers with the
9-12 commission.

9-13 (b) A cemetery [~~or crematory~~] may be owned by a person who is
9-14 not registered under this chapter.

9-15 (d) The person [~~individual~~] must:

9-16 (1) explain the purpose of the cemetery [~~or crematory~~]
9-17 business;

9-18 (2) provide the address and other contact information
9-19 for the business; and

9-20 (3) identify the [~~individual~~] owner or operator who is
9-21 registering.

9-22 SECTION 12. The heading to Section 651.655, Occupations
9-23 Code, is amended to read as follows:

9-24 Sec. 651.655. RENEWAL OF CEMETERY [~~OR CREMATORY~~]
9-25 REGISTRATION.

9-26 SECTION 13. Subsection (c), Section 651.655, Occupations
9-27 Code, is amended to read as follows:

9-28 (c) If the registration is expired for longer than 30 days,
9-29 the registrant may not renew the registration, and the cemetery [~~or~~
9-30 ~~crematory~~] may not be operated, until the owner or operator
9-31 registers as provided by Section 651.653.

9-32 SECTION 14. Subchapter N, Chapter 651, Occupations Code, is
9-33 amended by adding Sections 651.656, 651.657, and 651.658 to read as
9-34 follows:

9-35 Sec. 651.656. CREMATORY ESTABLISHMENT LICENSE REQUIRED.

9-36 (a) A person may not conduct a crematory business in this state
9-37 unless the person who is the owner or operator of the crematory
9-38 holds a crematory establishment license issued by the commission.

9-39 (b) A person may not hold a crematory establishment license
9-40 unless the person holds a funeral establishment license or owns or
9-41 operates a perpetual care cemetery.

9-42 (c) Subsection (b) does not apply to the owner or operator
9-43 of a crematory registered with the commission on September 1, 2003.

9-44 (d) The commission by rule shall establish the fee for a
9-45 crematory establishment license under this subchapter in an amount
9-46 sufficient to cover the costs of regulating crematory
9-47 establishments under this subchapter, including discipline and
9-48 investigation of complaints.

9-49 Sec. 651.657. CREMATORY ESTABLISHMENT LICENSE APPLICATION.

9-50 (a) An applicant for a crematory establishment license must:

9-51 (1) submit a written license application to the
9-52 commission;

9-53 (2) pay the application fee; and

9-54 (3) provide proof satisfactory to the commission that
9-55 the owner or operator of the crematory is trained and certified by a
9-56 reputable organization approved by the commission, such as the
9-57 Cremation Association of North America.

9-58 (b) An application for a license or renewal of a license as a
9-59 crematory establishment must include:

9-60 (1) the full business name of the crematory
9-61 establishment;

9-62 (2) the address of:

9-63 (A) the applicant if the business is owned by an
9-64 individual;

9-65 (B) each partner if the business is a
9-66 partnership;

9-67 (C) each member of the board of directors if the
9-68 business is an association; or

9-69 (D) each shareholder who owns more than 25

10-1 percent of the corporate stock and each officer and director if the
 10-2 business is a corporation;

10-3 (3) a statement from each individual named under
 10-4 Subdivision (2) that details:

10-5 (A) the individual's business experience for the
 10-6 previous 10 years;

10-7 (B) any felony or misdemeanor conviction of the
 10-8 individual;

10-9 (C) any involvement of the individual as a
 10-10 defendant in a civil action involving allegations of fraud; and

10-11 (D) a suspension by this state or any other state
 10-12 of any license related to funeral directing or the operation of a
 10-13 cemetery or crematory;

10-14 (4) the location of the crematory; and

10-15 (5) the date the business was established.

10-16 (c) An application for a license or renewal of a license
 10-17 must be on a form furnished by the commission.

10-18 Sec. 651.658. CREMATORY ESTABLISHMENT LICENSE RENEWAL AND
 10-19 ANNUAL REPORT; PENALTY. (a) To renew a crematory establishment
 10-20 license, the crematory establishment must annually:

10-21 (1) file a report with the commission that lists the
 10-22 number of cremations performed at the crematory during the previous
 10-23 year;

10-24 (2) pay the license renewal fee; and

10-25 (3) provide the information required by Section
 10-26 651.657 or a written statement that the information has not changed
 10-27 since previously provided.

10-28 (b) The commission shall mail written notice to a license
 10-29 holder of the impending expiration of the license not later than the
 10-30 30th day before the expiration date of the license. The notice must
 10-31 state that to renew the license, the license holder must pay the
 10-32 renewal fee not later than the date on which the license expires.

10-33 (c) A license holder who fails to pay the renewal fee on or
 10-34 before the expiration date is subject to a late payment penalty
 10-35 equal to the amount of the renewal fee.

10-36 (d) A person may not renew a license that has been expired
 10-37 for more than 30 days. A person holding a license that has been
 10-38 expired for more than 30 days must apply for a new license as
 10-39 required by this subchapter to conduct a crematory business.

10-40 (e) The commission shall grant an extension for filing the
 10-41 annual report required by this section on the written request of a
 10-42 crematory establishment for good cause. An extension may not
 10-43 exceed 60 days. The commission may grant additional extensions for
 10-44 good cause.

10-45 (f) The commission shall impose a \$100 late fee for each day
 10-46 a crematory establishment fails to submit the annual report
 10-47 required by this section if an extension has not been granted.

10-48 SECTION 15. Section 711.006, Health and Safety Code, is
 10-49 repealed.

10-50 SECTION 16. (a) Not later than November 1, 2003, the Texas
 10-51 Funeral Service Commission shall:

10-52 (1) develop the crematory application form required
 10-53 for licensing and license renewal under Section 651.657,
 10-54 Occupations Code, as added by this Act;

10-55 (2) adopt the rules required by Section 716.002,
 10-56 Health and Safety Code, as added by this Act;

10-57 (3) establish the procedures and qualifications for a
 10-58 crematory establishment license as required by Subchapter N,
 10-59 Chapter 651, Occupations Code, as amended by this Act; and

10-60 (4) determine the organizations approved to train and
 10-61 certify the owner or operator of the crematory as required by
 10-62 Subdivision (3), Subsection (a), Section 651.657, Occupations
 10-63 Code, as added by this Act.

10-64 (b) An owner or operator of a crematory that is registered
 10-65 as required by Subchapter N, Chapter 651, Occupations Code, before
 10-66 the effective date of this Act may continue to conduct a crematory
 10-67 business in this state after that date in the same manner as if the
 10-68 crematory held a crematory establishment license under Subchapter
 10-69 N, Chapter 651, Occupations Code, as amended by this Act.

11-1 (c) The owner or operator of a crematory establishment that
11-2 is registered as required by Subchapter N, Chapter 651, Occupations
11-3 Code, before the effective date of this Act shall comply with the
11-4 licensing renewal and annual report requirements of Section
11-5 651.658, Occupations Code, as added by this Act, on the first
11-6 renewal of the registration that occurs after December 31, 2003.

11-7 (d) Subchapter N, Chapter 651, Occupations Code, as amended
11-8 by this Act, and Chapter 716, Health and Safety Code, as added by
11-9 this Act, apply only to the operation of a crematory establishment
11-10 on or after January 1, 2004. The operation of a crematory
11-11 establishment before January 1, 2004, is governed by the law in
11-12 effect immediately before the effective date of this Act, and that
11-13 law is continued in effect for this purpose.

11-14 (e) The repeal by this Act of Section 711.006, Health and
11-15 Safety Code, applies only to a cause of action that accrues on or
11-16 after January 1, 2004. A cause of action that accrues before
11-17 January 1, 2004, is governed by the law in effect at the time the
11-18 cause of action accrues, and that law is continued in effect for
11-19 this purpose.

11-20 SECTION 17. This Act takes effect September 1, 2003, except
11-21 that Section 15 of this Act takes effect January 1, 2004.

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