

By: Ellis

S.B. No. 471

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the regulation of crematories, cemeteries, and funeral
3 homes; providing a penalty.

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

5 SECTION 1. Section 651.001, Occupations Code, is amended by
6 amending Subdivisions (5) and (7) and adding Subdivision (16-a) to
7 read as follows:

8 (5) "First call" means the beginning of the
9 relationship and duty of a funeral director to take charge of a dead
10 human body and have the body prepared for burial or disposition by
11 embalming, cremation, or another method. The term does not include:

12 (A) an ambulance call if the person dispatching
13 the ambulance does not know whether a dead human body is to be
14 picked up; or

15 (B) the removal of a body for an autopsy or
16 inquest under Chapter 49, Code of Criminal Procedure, as ordered or
17 directed by a justice of the peace, death investigator, peace
18 officer, or medical examiner.

19 (7) "Funeral directing" means acts associated with or
20 arranging for the disposition of a dead human body [7] performed by
21 a person for compensation, including the acts described by Section
22 651.0015 [from the time of first call until:

23 (A) inurnment, interment, or entombment
24 services are complete; or

1 ~~[(B) the body is permanently transported out of~~
2 ~~this state].~~

3 (16-a) "Trainee license holder" means a person who:

4 (A) is engaged in learning the practice of
5 funeral directing or embalming under the instruction, direction,
6 and personal supervision of a funeral director or embalmer; and

7 (B) holds a trainee license issued by the
8 commission under this chapter.

9 SECTION 2. Subchapter A, Chapter 651, Occupations Code, is
10 amended by adding Section 651.0015 to read as follows:

11 Sec. 651.0015. PRACTICE OF FUNERAL DIRECTING. (a) The
12 practice of funeral directing consists of acts performed by a
13 funeral director from the time of first call until:

14 (1) inurnment, interment, or entombment services are
15 complete; or

16 (2) the body is permanently transported out of this
17 state.

18 (b) The practice of funeral directing includes acts
19 performed by a funeral director at the request of the family member
20 or other person responsible for making arrangements for the final
21 disposition of the deceased or of a governmental entity responsible
22 for disposing of dead human bodies to:

23 (1) direct the funeral service of the deceased;

24 (2) inform the family member or other person
25 responsible for making funeral arrangements that a contract will
26 exist between the funeral director and the family member or other
27 person;

1 (3) provide consumer information, including
2 brochures, price lists, and funeral purchase agreements;

3 (4) sign the funeral purchase agreement;

4 (5) assist in the selection of funeral merchandise and
5 other goods and services;

6 (6) obtain the information required for the issuance
7 of a death certificate and file the death certificate;

8 (7) obtain or file other documents required by law,
9 including permits;

10 (8) coordinate with a cemetery or crematory for the
11 disposal of remains;

12 (9) ensure the proper burial or disposal of remains;

13 (10) supervise disinterment and removal of remains
14 from a place of interment; and

15 (11) communicate with the deceased's family or other
16 representatives regarding the acts described by this section.

17 SECTION 3. Section 651.151(b), Occupations Code, is amended
18 to read as follows:

19 (b) The commission shall examine each applicant for a
20 funeral director's license, embalmer's license, [~~or~~] provisional
21 license, or trainee license and shall issue the appropriate license
22 to a person who meets the licensing requirements.

23 SECTION 4. Section 651.152, Occupations Code, is amended to
24 read as follows:

25 Sec. 651.152. RULES; PROCEDURES; FORMS; STANDARDS OF
26 CONDUCT. (a) The commission may:

27 (1) adopt rules, establish procedures, and prescribe

1 forms necessary to administer and enforce this chapter; and

2 (2) adopt rules relating to the final disposition of a
3 dead human body under Chapters 713, 714, and 715, Health and Safety
4 Code.

5 (b) The commission by rule shall establish standards of
6 professional conduct and ethical behavior for a license holder
7 under this chapter.

8 SECTION 5. Section 651.154, Occupations Code, is amended to
9 read as follows:

10 Sec. 651.154. FEES. (a) The commission shall set the
11 following fees in amounts reasonable and necessary to administer
12 this chapter:

13 (1) the funeral director's and embalmer's application
14 fee, license fee, duplicate license fee, and the fee for a
15 reciprocal license under Section 651.259 [~~fee~~]; and

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

18 (b) The commission shall set the trainee [~~provisional~~]
19 license fee, examination fee, renewal fee, and late renewal penalty
20 in amounts reasonable and necessary to administer the trainee
21 [~~provisional~~] license program.

22 (c) The commission shall set fees under this chapter in
23 amounts sufficient to cover the costs of:

24 (1) processing duplicate, replacement, or additional
25 license renewal applications;

26 (2) issuing licenses and wall certificates;

27 (3) conducting audits to determine whether an

1 applicant meets the requirements for a provisional or trainee
2 license;
3 (4) preparing consumer brochures;
4 (5) preparing mortuary law books;
5 (6) collecting penalties for insufficient funds
6 checks; and
7 (7) providing postage associated with services
8 provided under this chapter.

9 SECTION 6. Sections 651.157(b) and (e), Occupations Code,
10 are amended to read as follows:

11 (b) If the commission finds a violation of this chapter, ~~[or~~
12 ~~of]~~ Chapter 193 or 361, Health and Safety Code, or the rules adopted
13 by the Texas Department of Health under those chapters, the
14 commission shall inspect the funeral establishment annually until
15 the commission determines that the establishment is free of
16 violations.

17 (e) A premises on which funeral directing or embalming is
18 practiced, regardless of whether the premises are open to the
19 public, and all funeral purchase agreements and retail price lists
20 shall be open at all times to inspection for any violation of this
21 chapter, ~~[or of]~~ Chapter 193 or 361, Health and Safety Code, or a
22 rule adopted by the Texas Department of Health under those chapters
23 by:

24 (1) an agent of the commission;
25 (2) an authorized agent of the state; or
26 (3) an authorized agent of the county or municipality
27 in which the premises is located.

1 SECTION 7. Section 651.1575(a), Occupations Code, is
2 amended to read as follows:

3 (a) The commission may inspect a cemetery or crematory for a
4 possible violation of this chapter or Chapters 711-715, Health and
5 Safety Code [~~only if the commission receives a complaint about that~~
6 ~~facility under Section 651.202~~].

7 SECTION 8. Section 651.159(a), Occupations Code, is amended
8 to read as follows:

9 (a) The commission, the Texas Department of Insurance, and
10 the Texas Department of Banking shall adopt a joint memorandum of
11 understanding relating to prepaid funeral services and
12 transactions. The memorandum must:

13 (1) outline the responsibilities of each agency in
14 regulating prepaid funeral services and transactions;

15 (2) outline the responsibilities of each agency under
16 Chapter 712, Health and Safety Code, and rules adopted by the Texas
17 Department of Banking under that chapter;

18 (3) establish procedures to be used by each agency in:

19 (A) referring a complaint to one of the other
20 agencies;

21 (B) investigating a complaint; and

22 (C) notifying the other agencies of a complaint
23 or a complaint investigation;

24 (4) [~~3~~] specify:

25 (A) an action the agencies regard as a deceptive
26 trade practice; and

27 (B) the information the agencies provide

1 consumers and when that information is to be provided; and

2 (5) [~~4~~] set the administrative penalty each agency
3 imposes for a violation.

4 SECTION 9. Section 651.160(a), Occupations Code, is amended
5 to read as follows:

6 (a) The commission and the Texas Department of Health shall
7 adopt a joint memorandum of understanding that:

8 (1) outlines the responsibilities of each agency in
9 enforcing requirements under Chapters 193, [~~and~~] 361, 694, and 711,
10 Health and Safety Code, the rules adopted by the Texas Department of
11 Health under those chapters, and rules adopted by the Texas
12 Department of Health related to vital statistics [~~that affect~~
13 ~~funeral establishments~~];

14 (2) establishes procedures by which each agency:

15 (A) may refer a complaint to the other; and

16 (B) will notify the other of a violation by a
17 funeral establishment of Chapter 193 or 361, Health and Safety
18 Code; and

19 (3) coordinates inspection and enforcement efforts by
20 both agencies for measures that a funeral establishment is required
21 to implement under Chapters 193 and 361, Health and Safety Code.

22 SECTION 10. Section 651.201(b), Occupations Code, is
23 amended to read as follows:

24 (b) The commission shall:

25 (1) for a fee provide each licensed funeral
26 establishment with the number of brochures the commission considers
27 appropriate; and

1 (2) make the brochure available to the public and
2 appropriate state agencies.

3 SECTION 11. Section 651.251, Occupations Code, is amended
4 to read as follows:

5 Sec. 651.251. LICENSE REQUIRED. (a) Funeral directing may
6 be performed only by a funeral director or a provisional license
7 holder, trainee license holder, or qualified mortuary student under
8 the supervision and direction of a funeral director. A person may
9 not engage or profess to be engaged in the business of funeral
10 directing or hold the person out to the public as a funeral director
11 unless the person is licensed as a funeral director.

12 (b) Embalming may be performed only by an embalmer or a
13 provisional license holder, trainee license holder, or qualified
14 mortuary student under the supervision and direction of an
15 embalmer. A person may not engage or profess to be engaged in the
16 business of embalming or hold the person out to the public as an
17 embalmer unless the person is licensed as an embalmer.

18 SECTION 12. Section 651.253, Occupations Code, is amended
19 to read as follows:

20 Sec. 651.253. GENERAL LICENSE REQUIREMENTS. (a) To be
21 eligible for a funeral director's license or an embalmer's license,
22 an 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;

26 (3) have graduated from an accredited school or
27 college of mortuary science;

1 (4) unless the applicant holds a reciprocal funeral
2 director's or embalmer's license under Section 651.259, have served
3 as a trainee [~~provisional~~] license holder for not less than one year
4 under the personal supervision and instruction of a funeral
5 director or embalmer, as applicable; and

6 (5) have successfully completed the applicable
7 written examination described by Section 651.254 or 651.255 [~~or~~
8 ~~651.256~~].

9 (b) An applicant for a funeral director's license or an
10 embalmer's license may not be considered for that license until the
11 applicant [+

12 [~~(1)~~] completes all of the requirements of the trainee
13 [~~provisional~~] license program[; and

14 [~~(2) attains a grade of at least 75 percent on the~~
15 ~~written examination given by the commission~~].

16 SECTION 13. Sections 651.254 and 651.255, Occupations Code,
17 are amended to read as follows:

18 Sec. 651.254. PROVISIONAL OR RECIPROCAL LICENSE
19 EXAMINATIONS[; RESULTS]. (a) To be eligible for a provisional
20 license under Section 651.2595 or a reciprocal license under
21 Section 651.259, the applicant must pay the examination fee set by
22 the commission and pass a written examination administered and
23 developed by the commission on:

24 (1) the law applicable to vital statistics pertaining
25 to dead human bodies; and

26 (2) state and local laws and rules relating to the
27 preparation, transportation, care, and disposition of dead human

1 bodies.

2 (b) An applicant must attain a passing score of at least 75
3 percent on the written examination required by Subsection (a).

4 (c) The commission shall provide for the examinations for a
5 provisional license or a reciprocal [funeral director's license and
6 an embalmer's] license under Section 651.259 to [shall] be held at
7 least quarterly [annually. The examinations shall be given at the
8 time and place designated by the commission. The commission shall
9 give notice of the examinations].

10 (d) The [(b) Not later than the 30th day after the date a
11 person takes a licensing examination under this chapter, the
12 commission shall notify the person of the results of the
13 examination.

14 [(c) If the examination is graded or reviewed by a testing
15 service:

16 [(1) the] commission shall notify the person of the
17 results of the examination not later than the 14th day after the
18 date the commission receives the examination results [from the
19 testing service, and

20 [(2) if notice of the examination results will be
21 delayed for longer than 90 days after the examination date, the
22 commission shall notify the person of the reason for the delay
23 before the 90th day.

24 [(d) The commission may require a testing service to notify
25 a person of the results of the person's examination].

26 (e) If requested in writing by a person who fails the [a
27 licensing] examination [administered under this chapter], the

1 commission shall furnish the person with an analysis of the
2 person's performance on the examination.

3 Sec. 651.255. LICENSE EXAMINATIONS [~~REQUIRED FOR FUNERAL~~
4 ~~DIRECTOR'S LICENSE~~]. (a) To be eligible for a license as a funeral
5 director or embalmer under this chapter, an applicant must pass an
6 examination administered or approved by the American Board of
7 Funeral Service Education in conjunction with the International
8 Conference of Funeral Service Examining Boards or other entity
9 designated by the [The] commission [~~shall administer or arrange for~~
10 ~~the administration of.~~

11 [~~(1) a written professionally prepared examination]~~

12 on:

- 13 (1) [~~(A)~~ the art and technique of funeral directing;
14 (2) [~~(B)~~ the signs of death;
15 (3) [~~(C)~~ the manner by which death may be determined;
16 (4) [~~(D)~~ sanitation and hygiene;
17 (5) [~~(E)~~ mortuary management and mortuary law;
18 (6) [~~(F)~~ business and professional ethics; [and]
19 (7) the anatomy of the human body, including the
20 cavities and the arterial and venous system of the human body;
21 (8) blood and discoloration;
22 (9) bacteriology and hygiene;
23 (10) pathology;
24 (11) chemistry and embalming;
25 (12) arterial and cavity embalming;
26 (13) restorative art;
27 (14) disinfecting;

1 (15) embalming special cases;

2 (16) contagious and infectious diseases;

3 (17) care, preservation, transportation, and
4 disposition of dead human bodies;

5 (18) sanitary science; and

6 (19) [(C)] other subjects that may be taught in a
7 recognized school or college of mortuary science[~~and~~

8 ~~[(2) a written examination developed by the commission~~
9 ~~or developed for the commission by contract on:~~

10 ~~[(A) laws applicable to vital statistics~~
11 ~~pertaining to dead human bodies; and~~

12 ~~[(B) local and state rules and laws relating to~~
13 ~~the preparation, transportation, care, and disposition of dead~~
14 ~~human bodies].~~

15 (b) An applicant must attain a passing score of at least 75
16 percent on each subject described by Subsection (a).

17 (c) The commission shall notify the person of the results of
18 the examination not later than the 14th day after the date the
19 commission receives the results.

20 (d) If requested in writing by a person who fails a
21 licensing examination administered under this chapter, the
22 commission shall furnish the person with an analysis of the
23 person's performance on the examination.

24 SECTION 14. Section 651.259(f), Occupations Code, is
25 amended to read as follows:

26 (f) An applicant for a license under this section must:

27 (1) provide proof that:

1 (A) the license is in good standing;
2 (B) the applicant has practiced under the license
3 for at least:

4 (i) one year in the state that issued the
5 license if that state has license requirements substantially
6 equivalent to those of this state; or

7 (ii) five years in the state that issued the
8 license if that state does not have license requirements
9 substantially equivalent to those of this state; and

10 (C) the applicant has graduated from an
11 accredited college of mortuary science; and

12 (2) pass a written examination of not more than 50
13 questions on applicable state laws and commission rules as provided
14 by Section 651.254.

15 SECTION 15. The heading to Subchapter G, Chapter 651,
16 Occupations Code, is amended to read as follows:

17 SUBCHAPTER G. LICENSE REQUIREMENTS: TRAINEE
18 [~~PROVISIONAL~~] LICENSE HOLDERS

19 SECTION 16. Sections 651.301-651.305, Occupations Code,
20 are amended to read as follows:

21 Sec. 651.301. TRAINEE [~~PROVISIONAL~~] LICENSE REQUIRED. A
22 person must obtain a trainee [~~provisional~~] license before the
23 person may engage in learning the practice of funeral directing or
24 embalming under the instruction, direction, and personal
25 supervision in this state of a licensed funeral director or
26 embalmer.

27 Sec. 651.302. APPLICATION; ISSUANCE OF TRAINEE

1 ~~[PROVISIONAL]~~ LICENSE. (a) The commission shall issue a trainee
2 ~~[provisional]~~ license to practice funeral directing to an applicant
3 who:

- 4 (1) is at least 18 years of age;
- 5 (2) has completed the educational requirements of
6 Section 651.253;
- 7 (3) passes ~~[takes]~~ the written examination given by
8 the commission;
- 9 (4) files an application for a trainee ~~[provisional]~~
10 license on a form provided by the commission and verified under oath
11 by the applicant; and
- 12 (5) pays any required application or license fee.

13 (b) The commission shall issue a trainee ~~[provisional]~~
14 license to practice embalming to an applicant who:

- 15 (1) is at least 18 years of age;
- 16 (2) has completed the educational requirements of
17 Section 651.253;
- 18 (3) passes ~~[takes]~~ the written examination given by
19 the commission;
- 20 (4) files an application for a trainee ~~[provisional]~~
21 license;
- 22 (5) pays any required application or license fee; and
- 23 (6) complies with the requirements of this chapter and
24 of the commission.

25 (c) An applicant who does not obtain a trainee ~~[provisional]~~
26 license before the second anniversary of the date the applicant
27 takes the examination must pass the examination again before being

1 licensed as a trainee [~~provisional~~] license holder.

2 Sec. 651.303. TRAINEE [~~PROVISIONAL~~] LICENSE PROGRAM. (a)

3 The commission shall prescribe and supervise the course of
4 instruction received by a trainee [~~provisional~~] license holder
5 while participating in a trainee [~~provisional~~] license program.

6 (b) The commission by rule shall define the terms of
7 employment of a trainee [~~provisional~~] license holder. The terms of
8 employment must include service by the trainee [~~provisional~~]
9 license holder under actual working conditions and under the
10 personal supervision of a funeral director or embalmer.

11 (c) The term of the trainee [~~provisional~~] license program
12 must be at least 12 consecutive months.

13 (d) The trainee [~~provisional~~] license program must include
14 assisting with at least 60 cases. Not more than two trainee
15 [~~provisional~~] license holders may receive credit for work done on
16 any one body. The commission by rule shall:

17 (1) define the standards for a case;

18 (2) set the number of cases a trainee [~~provisional~~]
19 license holder is required to complete during the program; and

20 (3) establish guidelines for supervision under which a
21 trainee [~~provisional~~] license holder is granted increased
22 responsibilities during the course of the trainee [~~provisional~~]
23 license program.

24 (e) The standards required for a complete case include:

25 (1) for an embalmer, all the duties and activities
26 necessary for embalming; and

27 (2) for a funeral director, all the activities

1 necessary from the time the body is obtained until final
2 disposition.

3 (f) The funeral director trainee [~~provisional~~] license
4 program may be served concurrently with the embalmer trainee
5 [~~provisional~~] license program.

6 Sec. 651.304. EMPLOYMENT REPORTS. (a) On entering
7 employment with a funeral director or embalmer, a trainee
8 [~~provisional~~] license holder shall immediately notify the
9 commission of the name and place of business of the funeral director
10 or embalmer under whom the trainee [~~provisional~~] license holder
11 will train. The funeral director or embalmer shall sign the
12 notification.

13 (b) A trainee [~~provisional~~] license holder shall report to
14 the commission monthly. The report must:

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

17 (2) identify each case that the trainee [~~provisional~~]
18 license holder:

19 (A) assisted in handling during that month if the
20 trainee [~~provisional~~] license holder is a funeral director
21 applicant; or

22 (B) handled or assisted in handling during that
23 month if the trainee [~~provisional~~] license holder is an embalmer
24 applicant; and

25 (3) be certified by the funeral director or embalmer
26 under whom the trainee [~~provisional~~] license holder performed the
27 work.

1 (c) The trainee [~~provisional~~] license holder shall make the
2 monthly report required by Subsection (b) regardless of whether the
3 trainee [~~provisional~~] license holder performed an activity
4 described by Subsection (b) during that month for which a report is
5 required.

6 (d) If a trainee [~~provisional~~] license holder leaves the
7 employment of a funeral director or embalmer, the funeral director
8 or embalmer shall prepare an affidavit showing the length of time
9 the trainee [~~provisional~~] license holder was employed and the
10 number of cases handled while employed by the funeral director or
11 embalmer. The original affidavit shall be filed with the commission
12 and made a matter of record. A copy of the affidavit shall be
13 furnished to the trainee [~~provisional~~] license holder.

14 (e) The commission shall furnish report forms to be used by
15 a trainee [~~provisional~~] license holder.

16 Sec. 651.305. RENEWAL OR REINSTATEMENT OF TRAINEE
17 [~~PROVISIONAL~~] LICENSE.

18 (c) If a trainee [~~provisional~~] license holder fails to
19 timely pay the renewal fee, the commission shall:

20 (1) impose a late payment penalty equal to the amount
21 of the license renewal fee;

22 (2) suspend the license for nonpayment; and

23 (3) notify the trainee [~~provisional~~] license holder of
24 the suspension.

25 (d) If the renewal fee and penalty are not paid before the
26 91st day after the date of the notice of suspension, the commission
27 shall cancel the license. If the license is canceled under this

1 subsection, the trainee [~~provisional~~] license holder may apply for
2 reinstatement not later than 18 months after the date of
3 cancellation. The commission may reinstate the canceled license if:

4 (1) all other commission requirements are satisfied;
5 and

6 (2) the license fee and a late payment penalty equal to
7 the amount of the license fee for the period of the cancellation are
8 paid.

9 (e) A trainee [~~provisional~~] license may be renewed after the
10 second anniversary of the date of its issuance only if the person
11 requests and receives from the commission an extension based on
12 hardship.

13 (f) A trainee [~~provisional~~] license that has been canceled
14 or suspended or has lapsed for a period of at least five years may be
15 reinstated only if the applicant passes the written embalming or
16 funeral directing examination.

17 (g) The commission may adopt rules relating to the
18 reinstatement of a trainee [~~provisional~~] license under this
19 section.

20 SECTION 17. Section 651.401(b), Occupations Code, is
21 amended to read as follows:

22 (b) A dead human body may be transferred without a funeral
23 director personally making the transfer:

24 (1) from one funeral establishment to another;

25 (2) from the place of death or a funeral establishment
26 to [~~and from~~] a morgue in which an autopsy is performed and from the
27 morgue to a funeral establishment;

1 (3) to and from an airport, crematory, or both; or
2 (4) in circumstances in which there is no reasonable
3 probability that an unlicensed person will encounter a family
4 member or other person with whom funeral arrangements are normally
5 made by a funeral director or embalmer.

6 SECTION 18. Section 651.404, Occupations Code, is amended
7 to read as follows:

8 Sec. 651.404. CONSUMER BROCHURE. When funeral services are
9 discussed, a funeral director or agent of the funeral establishment
10 shall provide each prospective customer with a copy of the brochure
11 prepared by the commission under Section 651.201. The funeral
12 establishment may [~~shall~~] print additional copies of the brochure
13 only if the commission is unable to provide the number of brochures
14 needed by the funeral establishment.

15 SECTION 19. Section 651.405, Occupations Code, is amended
16 by adding Subsection (c) to read as follows:

17 (c) A funeral establishment must provide a copy of the
18 retail price list to a prospective customer before discussing:

19 (1) the prices of goods or services;
20 (2) the types of funeral services or final
21 dispositions offered; or

22 (3) the funeral merchandise offered by the funeral
23 establishment.

24 SECTION 20. Section 651.4055, Occupations Code, is amended
25 by adding Subsection (d) to read as follows:

26 (d) A cemetery or crematory business must provide a copy of
27 the retail price list to a prospective customer before discussing:

- 1 (1) the prices of goods or services;
2 (2) the types of services or final dispositions
3 offered; or
4 (3) the goods or services offered by the crematory or
5 cemetery business.

6 SECTION 21. Section 651.406(c), Occupations Code, is
7 amended to read as follows:

8 (c) The purchase agreement must include the original
9 signature of [~~shall be signed by~~] the funeral director making the
10 arrangements.

11 SECTION 22. Section 651.451, Occupations Code, is amended
12 to read as follows:

13 Sec. 651.451. CERTAIN FRAUDULENT AND DECEPTIVE ACTS. A
14 person violates this chapter if the person:

15 (1) presents to the commission a license, certificate,
16 registration, or diploma that was illegally or fraudulently
17 obtained;

18 (2) uses fraud or deception in passing the
19 examination, including impersonating or acting as a proxy for
20 another person in the examination;

21 (3) purchases, sells, barter, or uses, or offers to
22 purchase, sell, barter, or use, a license, registration,
23 certificate, or transcript of a license, registration, or
24 certificate in or incident to an application to the commission for a
25 license or registration issued under this chapter;

26 (4) alters, with fraudulent intent, a license,
27 registration, or certificate issued under this chapter or a

1 transcript of a license, registration, or certificate;

2 (5) uses a license, registration, certificate, or
3 diploma issued under this chapter or a transcript of a license,
4 registration, certificate, or diploma that has been fraudulently
5 purchased, issued, counterfeited, or materially altered;

6 (6) impersonates a funeral director, embalmer, or
7 other person regulated under this chapter;

8 (7) permits another to use the person's license or
9 registration to perform an activity regulated under this chapter;
10 or

11 (8) presents false certification of work done as a
12 trainee [~~provisional~~] license holder.

13 SECTION 23. Section 651.456, Occupations Code, is amended
14 to read as follows:

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

17 (1) takes custody of a dead human body without the
18 permission of:

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

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

24 (2) refuses to promptly surrender a dead human body or
25 cremated remains to a person or agent authorized to make funeral
26 arrangements for the deceased or on the express order of the person
27 lawfully entitled to the custody of the remains; or

1 (3) exhibits disrespect for dead human bodies by
2 violating any state law governing the transportation, storage,
3 refrigeration, interment, or disinterment of a dead human body.

4 SECTION 24. Section 651.457, Occupations Code, is amended
5 to read as follows:

6 Sec. 651.457. UNETHICAL CONDUCT REGARDING EMBALMING. (a)
7 A person violates this chapter if the person:

8 (1) embalms a body without ~~[+~~
9 ~~[(A)]~~ receiving the express written or oral
10 permission of a person authorized to make funeral arrangements for
11 the deceased ~~[, or~~
12 ~~[(B) making a documented reasonable effort over a~~
13 ~~period of at least three hours to obtain the permission]~~;

14 (2) embalms or attempts to embalm a dead human body
15 without proper authority, evidence of which includes making an
16 incision on the body, raising a circulatory vessel of the body, or
17 injecting a chemical into the body;

18 (3) allows the presence or participation of a student
19 for credit or satisfaction of academic requirements during the
20 embalming of a dead human body without complying with Section
21 651.407; ~~[or]~~

22 (4) places a chemical or substance on or in a dead
23 human body to disinfect or preserve the body or to restore body
24 tissues and structures without holding an embalmer's license;

25 (5) embalms a body without completing and signing a
26 case report that includes:

27 (A) the name of the licensed embalmer;

1 (B) the name of any mortuary student or trainee
2 license holder who assists the embalmer;

3 (C) the name of the establishment in which the
4 embalming was conducted; and

5 (D) the name of the establishment that received
6 the embalmed remains;

7 (6) does not retain for at least two years a record of
8 an embalming performed by the person that includes the information
9 required by Subdivision (5); or

10 (7) provides or uses embalming chemicals for any
11 purpose other than for legitimate embalming procedures.

12 (b) Notwithstanding Subsection (a)(4), a trainee
13 [provisional] license holder does not violate this chapter if the
14 trainee [provisional] license holder places a chemical or substance
15 on or in a dead human body to disinfect or preserve the body or to
16 restore body tissues and structures under the supervision of an
17 embalmer.

18 (c) Notwithstanding Subsection (a)(1), a person does not
19 violate this chapter if the person who embalmed the body:

20 (1) made a documented reasonable effort over a period
21 of at least three hours to obtain the authorized person's
22 permission; and

23 (2) had no reason to believe the authorized person
24 would object to the embalming.

25 SECTION 25. Subchapter J, Chapter 651, Occupations Code, is
26 amended by adding Section 651.4585 to read as follows:

27 Sec. 651.4585. UNETHICAL CONDUCT REGARDING INVESTIGATIONS,

1 DISCIPLINARY ACTIONS, AND COMPLAINTS. A person violates this
2 chapter if the person attempts to:

3 (1) influence the outcome of any investigation or
4 adjudicatory proceeding of or against a license holder by directly
5 communicating with a member of the commission before the final
6 disposition of the complaint; or

7 (2) influence a complainant or witness in a complaint
8 to:

9 (A) modify the nature of the complaint; or

10 (B) withdraw the complaint by means of coercion,
11 harassment, bribery, force, retaliation, or threat of force or
12 retaliation against a complainant who filed the complaint in good
13 faith.

14 SECTION 26. Section 651.459, Occupations Code, is amended
15 by amending Subsections (a) and (c) and adding Subsection (d) to
16 read as follows:

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

18 (1) wilfully makes a false statement on a death
19 certificate or a document required by this chapter or a rule adopted
20 under this chapter;

21 (2) engages in fraudulent, unprofessional, or
22 deceptive conduct in providing funeral services or merchandise to a
23 customer;

24 (3) engages in dishonest conduct, wilful conduct, or
25 negligence in the practice of embalming or funeral directing that
26 is likely to or does deceive, defraud, or otherwise injure the
27 public;

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

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

7 (6) misappropriates funds held by a license holder, a
8 funeral establishment, an employee or agent of the funeral
9 establishment, or another depository, that create an obligation to
10 provide a funeral service or merchandise, including retaining for
11 an unreasonable time excess funds paid by or on behalf of the
12 customer for which the customer is entitled to a refund; ~~or~~

13 (7) performs acts of funeral directing or embalming
14 that are outside the licensed scope and authority of the license
15 holder, or performs acts of funeral directing or embalming in a
16 capacity other than that of an employee, agent, subcontractor, or
17 assignee of a licensed funeral establishment that has contracted to
18 perform those acts; or

19 (8) fails in any way to substantially fulfill the
20 person's contractual obligation in a purchase agreement.

21 (c) A funeral director ~~[in charge]~~ violates this chapter if
22 the funeral director exploits or encourages a person's emotional
23 dependency on the funeral director in the funeral director's
24 professional capacity as an adviser entrusted with the remains of a
25 deceased family member ~~[in charge fails to provide a funeral~~
26 ~~director or an embalmer for direction or personal supervision for a~~
27 ~~first call].~~

1 (d) A funeral director violates this chapter if the funeral
2 director assists a person who is not licensed under this chapter to:

3 (1) represent that the person is a licensed embalmer
4 or funeral director; or

5 (2) engage in funeral directing or embalming.

6 SECTION 27. Section 651.460, Occupations Code, is amended
7 to read as follows:

8 Sec. 651.460. PROHIBITED PRACTICES RELATED TO FAILURE TO
9 COMPLY WITH OTHER LEGAL REQUIREMENTS. (a) A person violates this
10 chapter if the person:

11 (1) arranges for funeral services or merchandise and
12 fails to provide a customer with a retail price list as required by
13 Sections 651.405 and 651.4055 or a purchase agreement as required
14 by Sections [Section] 651.406 and 651.4065;

15 (2) fails to retain and make available to the
16 commission, on request, copies of all price lists, written notices,
17 embalming documents, and memoranda of agreement required by this
18 chapter for two years after the date of distribution or signing;

19 (3) violates this chapter, a rule adopted under this
20 chapter, an order by the commission revoking, suspending, or
21 probating a license, an order assessing an administrative penalty,
22 or an agreement to pay an administrative penalty;

23 (4) allows the use of a dead human body by an embalming
24 establishment for research or educational purposes without
25 complying with Section 651.407; or

26 (5) is associated with a funeral establishment,
27 whether as an employee, agent, subcontractor, assignee, owner, or

1 otherwise, and fails to comply with this chapter or a rule adopted
2 under this chapter.

3 (b) A funeral establishment violates this chapter if:

4 (1) the funeral establishment fails to substantially
5 comply with Section 651.351;

6 (2) the funeral establishment or a person acting on
7 behalf of the funeral establishment violates Chapter 193 or 361,
8 Health and Safety Code, or a rule adopted by the Texas Department of
9 Health related to vital statistics; or

10 (3) the funeral establishment, a person acting on
11 behalf of the funeral establishment, or a person directly or
12 indirectly connected with the funeral establishment violates
13 Chapter 154, Finance Code, or a rule adopted under that chapter.

14 SECTION 28. Section 651.501(a), Occupations Code, is
15 amended to read as follows:

16 (a) After a hearing as provided by this subchapter, the
17 commission may issue a reprimand, assess an administrative penalty,
18 revoke, suspend, or probate the suspension of a license [~~or~~
19 ~~provisional license~~], or impose any combination of those penalties
20 for a violation of this chapter or a rule adopted under this
21 chapter.

22 SECTION 29. Sections 651.502(a) and (d), Occupations Code,
23 are amended to read as follows:

24 (a) The commission may, before a hearing or a waiver of a
25 right to a hearing, refuse to issue:

26 (1) a license [~~or provisional license~~] to a person who
27 has violated this chapter or a rule adopted under this chapter; or

1 (2) an establishment license to an individual,
2 partnership, or corporation if the individual, a partner, or an
3 officer or director of the corporation:

4 (A) has violated this chapter or a rule adopted
5 under this chapter;

6 (B) previously held an establishment license
7 that was suspended or revoked; or

8 (C) attempts to avoid a revocation, suspension,
9 or license refusal by subterfuge or other evasive means.

10 (d) A person applying for a funeral director's or embalmer's
11 license who has a criminal conviction described by Section 651.452
12 may request a hearing on whether the conviction prevents the
13 commission from issuing a license [~~or a provisional license~~]. A
14 hearing under this subsection must be requested before the person
15 enters mortuary school and shall be conducted as required by
16 Section 651.506. A decision made in a hearing under this
17 subsection, unless modified on appeal, is binding on the commission
18 and on the person who requests the hearing when the person applies
19 to the commission for the license [~~or provisional license~~].

20 SECTION 30. Section 651.506(a), Occupations Code, is
21 amended to read as follows:

22 (a) A proceeding conducted by the commission relating to the
23 denial of a license [~~or provisional license~~], the suspension or
24 revocation of a license, the issuance of a reprimand, or the
25 imposition of an administrative penalty assessed after a hearing as
26 provided by Section 651.551 and judicial review of the proceeding
27 are governed by Chapter 2001, Government Code.

1 SECTION 31. Section 651.602(a), Occupations Code, is
2 amended to read as follows:

3 (a) A person commits an offense if the person:

4 (1) acts or holds the person out as a funeral director,
5 embalmer, or trainee [~~provisional~~] license holder without being
6 licensed under this chapter;

7 (2) makes a first call in a manner that violates
8 Section 651.401;

9 (3) is a funeral director, embalmer, or trainee
10 [~~provisional~~] license holder and engages in a funeral practice that
11 violates this chapter or a rule adopted under this chapter; [~~or~~]

12 (4) violates Chapter 154, Finance Code, or a rule
13 adopted under that chapter, regardless of whether the Texas
14 Department of Banking or another governmental agency takes action
15 relating to the violation; or

16 (5) without being licensed under this chapter,
17 operates a funeral establishment, accepts possession of a dead
18 human body for final disposition, or implies by word or act that the
19 person operates a licensed establishment allowed under law to
20 receive and handle the disposition of human remains.

21 SECTION 32. The heading to Subchapter N, Chapter 651,
22 Occupations Code, is amended to read as follows:

23 SUBCHAPTER N. REGULATION OF [~~REGISTRATION REQUIREMENTS.~~]

24 CEMETERIES AND CREMATORIES

25 SECTION 33. Section 651.652(a), Occupations Code, is
26 amended to read as follows:

27 (a) This subchapter applies [~~only~~] to a cemetery or

1 crematory [~~that sells goods or services related to the burial or~~
2 ~~final disposition of a body~~].

3 SECTION 34. Section 651.653, Occupations Code, is amended
4 by amending Subsection (a) and adding Subsection (f) to read as
5 follows:

6 (a) A person may not conduct a cemetery or crematory
7 business in this state or sell goods and services related to the
8 final disposition of a body unless an individual who is the owner or
9 operator of the cemetery or crematory registers with the
10 commission.

11 (f) A person, including a cemetery or funeral
12 establishment, may not cremate human remains unless the person is
13 registered as a crematory business under this chapter.

14 SECTION 35. Section 651.654, Occupations Code, is amended
15 by adding Subsection (c) to read as follows:

16 (c) A crematory located at a perpetual care cemetery is
17 required to pay the registration fee required under this
18 subchapter.

19 SECTION 36. Subchapter N, Chapter 651, Occupations Code, is
20 amended by adding Sections 651.656-651.660 to read as follows:

21 Sec. 651.656. AUTHORIZATION REQUIRED. A crematory business
22 may not cremate human remains until the crematory operator
23 receives:

24 (1) an authorization for cremation signed by a medical
25 examiner or local registrar; and

26 (2) a signed death certificate.

27 Sec. 651.657. PERSONS AUTHORIZED TO BE PRESENT AT

1 CREMATION. Only the following persons may be present in the area
2 adjacent to a cremation chamber used for the cremation of human
3 remains or in the chapel area while any human remains are in those
4 areas before cremation, during cremation, or during removal of the
5 remains from the chamber:

6 (1) the family member or person responsible for making
7 arrangements for the deceased;

8 (2) a medical examiner or law enforcement officer
9 engaged in the performance of official duties;

10 (3) a representative of the commission engaged in the
11 performance of official duties; or

12 (4) an employee or representative of the crematory.

13 Sec. 651.658. CREMATION PROCEDURES. (a) A registered
14 crematory business may cremate only human remains.

15 (b) A crematory business may not simultaneously cremate the
16 human remains of more than one person in the same cremation chamber.

17 (c) A crematory business must place human remains in a
18 refrigerated holding facility that is in or adjacent to the
19 crematory and that has a temperature of not less than 34 and not
20 more than 40 degrees Fahrenheit until the remains are placed in the
21 cremation chamber.

22 (d) A crematory operator may not accept human remains for
23 cremation unless an identification label is placed on the remains
24 or on a container holding the remains.

25 (e) A crematory business shall establish written procedures
26 to ensure that human remains are properly identified while in the
27 crematory's custody.

1 Sec. 651.659. CREMATORY DUTIES REGARDING CREMATED REMAINS.

2 A crematory business shall:

3 (1) promptly surrender cremated remains to the family
4 member or other person responsible for making the arrangements for
5 final disposition;

6 (2) maintain a record for at least two years of:

7 (A) the date a dead human body was received by a
8 crematory;

9 (B) the identity of the deceased;

10 (C) the name and relationship of the deceased to
11 the person authorizing the cremation;

12 (D) the date the body was cremated;

13 (E) the date the cremated remains were released
14 by the crematory to the person who authorized the cremation or to
15 the funeral establishment in charge of final disposition of the
16 remains; and

17 (F) the date, if applicable, that the unclaimed
18 remains were interred as provided by Section 711.006, Health and
19 Safety Code; and

20 (3) comply with Section 10a, Article 49.25, Code of
21 Criminal Procedure, before cremating a dead human body within 48
22 hours of death.

23 Sec. 651.660. FUNERAL ESTABLISHMENT DUTIES REGARDING
24 CREMATED REMAINS. (a) A funeral establishment may not possess
25 cremated remains for more than 90 days. A funeral establishment may
26 dispose of cremated remains that are not claimed before the 91st day
27 after the date of receiving the remains by:

1 (1) delivering the remains as directed by the person
2 who contracted for the cremation;

3 (2) sending written notice by registered or certified
4 mail to the person who contracted for the cremation that the
5 cremated remains will be interred in a cemetery at the expense of
6 the person; or

7 (3) interring the cremated remains in a columbarium or
8 niche designed to hold cremated remains.

9 (b) After providing notice under Subsection (a)(2), a
10 funeral establishment may bill the person who contracted for the
11 cremation for the reasonable costs of interring the remains.

12 SECTION 37. Section 711.006(a), Health and Safety Code, is
13 amended to read as follows:

14 (a) A crematory may be constructed, established, or
15 maintained only in a burial park that:

16 (1) consists of at least 10 acres; and

17 (2) has ~~having~~ a columbarium, plot, or mausoleum
18 equipped for the interment of cremated remains.

19 SECTION 38. Section 711.0311(c), Health and Safety Code, is
20 amended to read as follows:

21 (c) A person commits an offense if the person acts without
22 proper legal authority and knowingly:

23 (1) defaces, vandalizes, injures, or removes a
24 gravestone, monument, or other structure commemorating a deceased
25 person or group of persons, whether located within or outside of a
26 cemetery;

27 (2) obliterates, vandalizes, or desecrates a park or

1 other area clearly designated to preserve and perpetuate the memory
2 of a deceased person or group of persons;

3 (3) obliterates, vandalizes, or desecrates plants,
4 trees, shrubs, or flowers located on or around a cemetery; ~~or~~

5 (4) obliterates, vandalizes, or desecrates a fence,
6 rail, curb, or other structure of a similar nature intended for the
7 protection or for the ornamentation of any plot, gravestone,
8 monument, or other structure of similar character;

9 (5) jeopardizes the integrity or structural soundness
10 of a grave or disturbs or moves a grave without complying with
11 Section 711.004;

12 (6) buries a deceased person in an occupied grave
13 without the written notification and consent of the owner; or

14 (7) harms, damages, or destroys a casket during
15 burial.

16 SECTION 39. Sections 651.0011(4), 651.163, 651.256, and
17 651.501(b), Occupations Code, are repealed.

18 SECTION 40. (a) The changes in law made by this Act to
19 Chapter 651, Occupations Code, and Section 711.0311, Health and
20 Safety Code, apply only to an offense committed on or after the
21 effective date of this Act. For purposes of this subsection, an
22 offense is committed before the effective date of this Act if any
23 element of the offense occurs before that date.

24 (b) An offense committed before the effective date of this
25 Act is governed by the law in effect on the date the offense was
26 committed, and the former law is continued in effect for that
27 purpose.

1 SECTION 41. The changes in law made by this Act regarding
2 grounds for disciplinary action by the Texas Funeral Service
3 Commission apply only to conduct occurring on or after the
4 effective date of this Act. Conduct that occurs before the
5 effective date of this Act is governed by the law in effect on the
6 date the conduct occurred, and the former law is continued in effect
7 for that purpose.

8 SECTION 42. Not later than March 1, 2004, the Texas Funeral
9 Service Commission shall:

10 (1) adopt the rules necessary to administer Chapter
11 651, Occupations Code, as amended by this Act; and

12 (2) establish the standards of professional conduct
13 required by Section 651.152, Occupations Code, as amended by this
14 Act.

15 SECTION 43. (a) The change in law made by this Act to
16 Chapter 651, Occupations Code, applies only to an application for a
17 license or registration or for renewal of a license or registration
18 filed on or after the effective date of this Act. An application
19 for a license or registration or an application to renew a license
20 or registration filed before the effective date of this Act is
21 governed by the law in effect on the date the application was filed,
22 and the former law is continued in effect for that purpose.

23 (b) The Texas Funeral Service Commission shall treat a
24 person who holds a provisional license under Subchapter G, Chapter
25 651, Occupations Code, immediately before the effective date of
26 this Act, as if the person holds a trainee license under Subchapter
27 G, Chapter 651, Occupations Code, as amended by this Act. A person

1 who holds a provisional license under Subchapter G, Chapter 651,
2 Occupations Code, on the effective date of this Act is entitled to
3 issuance of a trainee license on expiration of the provisional
4 license if the person otherwise meets the requirements for renewal
5 of a trainee license.

6 SECTION 44. This Act takes effect September 1, 2003.