

By: Carona

S.B. No. 385

A BILL TO BE ENTITLED

AN ACT

1
2 relating to the regulation of funeral homes, cemeteries, and
3 crematories.

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

5 SECTION 1. Section 711.004, Health and Safety Code, is
6 amended by adding Subsection (m) to read as follows:

7 (m) If a removal of remains is made to correct an error by a
8 cemetery organization, the cemetery organization is responsible
9 for all costs involved in the removal and reinterment of the
10 remains.

11 SECTION 2. Section 711.012(b), Health and Safety Code, is
12 amended to read as follows:

13 (b) The Texas Funeral Service Commission may adopt rules,
14 establish procedures, and prescribe forms to enforce and administer
15 Sections 711.003, 711.008, 711.010, 711.011, 711.021-711.035,
16 711.038, 711.0395, 711.041, 711.042, 711.061, and 711.062 relating
17 to cemeteries that are not perpetual care cemeteries.

18 SECTION 3. Section 711.038, Health and Safety Code, is
19 amended by adding Subsection (f) to read as follows:

20 (f) A cemetery organization may not resell the exclusive
21 right of sepulture in a plot unless the exclusive right of sepulture
22 has been reacquired by the cemetery organization. A sanction or
23 other penalty may not be imposed on a cemetery organization that
24 violates this subsection unless:

1 (1) the state agency authorized to enforce this
2 section provides the cemetery organization written notice of the
3 violation; and

4 (2) the cemetery organization does not correct the
5 violation before the 91st day after the date on which the cemetery
6 organization received the notice.

7 SECTION 4. Subchapter C, Chapter 711, Health and Safety
8 Code, is amended by adding Section 711.0395 to read as follows:

9 Sec. 711.0395. MULTIPLE INTERMENTS IN SAME PLOT. A
10 cemetery organization may not make more than one interment in a plot
11 unless each owner of the plot consents to the interment.

12 SECTION 5. Subchapter A, Chapter 716, Health and Safety
13 Code, is amended by adding Section 716.0035 to read as follows:

14 Sec. 716.0035. ACCEPTANCE OF REMAINS. A crematory
15 establishment may accept deceased human remains for refrigeration
16 before it receives authorization to cremate the remains under
17 Subchapter B.

18 SECTION 6. Section 716.051, Health and Safety Code, is
19 amended to read as follows:

20 Sec. 716.051. CREMATION AUTHORIZATION. A [~~Except as~~
21 ~~otherwise provided in this chapter, a~~] crematory establishment may
22 not cremate deceased human remains until it receives:

23 (1) a cremation authorization form signed by:

24 (A) an authorizing agent; and

25 (B) a funeral director of the funeral
26 establishment that contracted to provide for the cremation; and

27 (2) a death certificate or other death record that

1 indicates the deceased human remains may be cremated.

2 SECTION 7. Sections 716.052(a) and (c), Health and Safety
3 Code, are amended to read as follows:

4 (a) A cremation authorization form must:

5 (1) identify the deceased person and the time and date
6 of death;

7 (2) include the name and address of the funeral
8 establishment [~~director or other person~~] that contracted to provide
9 for the cremation;

10 (3) identify the authorizing agent and the
11 relationship between the authorizing agent and the deceased person;

12 (4) include a statement by the authorizing agent that:

13 (A) the authorizing agent has the right to
14 authorize the cremation of the deceased person and is not aware of
15 any person with a superior or equal priority right; or

16 (B) if another person has an equal priority right
17 to authorize cremation, the authorizing agent:

18 (i) has made all reasonable efforts but
19 failed to contact that person and believes the person would not
20 object to the cremation; and

21 (ii) agrees to indemnify and hold harmless
22 the funeral establishment and the crematory establishment for any
23 liability arising from performing the cremation without the
24 person's authorization;

25 (5) authorize the crematory establishment to cremate
26 the human remains;

27 (6) declare that to their knowledge the human remains

1 do not contain a pacemaker or any other material or implant that may
2 potentially be hazardous or cause damage to the cremation chamber
3 or the person performing the cremation;

4 (7) include the name of the funeral establishment or
5 other person authorized to receive the cremated remains from the
6 crematory establishment;

7 (8) detail the manner of permanent disposition of the
8 cremated remains, if known;

9 (9) list any items of value delivered to the crematory
10 establishment along with the human remains and include instructions
11 on the handling of the items;

12 (10) specify whether the authorizing agent has
13 arranged for a viewing of the deceased person or service with the
14 deceased person present before cremation and the date and time of
15 the viewing or service; and

16 (11) include the signature of the authorizing agent
17 attesting to the accuracy of all representations contained on the
18 cremation authorization form.

19 (c) A funeral director [~~or other representative~~] of a
20 funeral establishment that contracts to provide for the cremation
21 of deceased human remains must sign the cremation authorization
22 form.

23 SECTION 8. Section 716.102(a), Health and Safety Code, is
24 amended to read as follows:

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

1 includes:

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

4 (2) the date and time of the delivery;

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

7 (4) the name of the funeral establishment [~~or other~~
8 ~~entity~~] that contracted to provide for the cremation;

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

11 (6) the name of the deceased person.

12 SECTION 9. Section 716.103, Health and Safety Code, is
13 amended to read as follows:

14 Sec. 716.103. IDENTIFICATION RESPONSIBILITY OF CREMATORY.

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

19 (b) A crematory establishment shall place, with the
20 cremated remains, in the temporary container, urn, or other
21 permanent container, a permanent metal identification disc,
22 bracelet, or other item that can be used to identify the deceased
23 person.

24 SECTION 10. Section 716.156(b), Health and Safety Code, is
25 amended to read as follows:

26 (b) A crematory establishment shall furnish to a person who
27 receives the cremated remains a receipt that includes:

- 1 (1) the date and time of release;
- 2 (2) the printed name of the person who receives the
3 cremated remains;
- 4 (3) the name of the funeral establishment that [~~or~~
5 ~~other entity who~~] contracted to provide for the cremation;
- 6 (4) the printed name of the person who released the
7 cremated remains on behalf of the crematory establishment; and
- 8 (5) the name of the deceased person.

9 SECTION 11. Section 651.001(15), Occupations Code, is
10 amended to read as follows:

11 (15) "Purchase agreement" means a written statement
12 that itemizes the cost of funeral services or merchandise selected
13 by a customer from the general [~~retail~~] price list.

14 SECTION 12. Section 651.154(a), Occupations Code, is
15 amended to read as follows:

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

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

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

23 SECTION 13. Section 651.156, Occupations Code, is amended
24 by adding Subsection (d) to read as follows:

25 (d) A subpoena or subpoena duces tecum issued under this
26 section is not effective unless it is issued in compliance with:

27 (1) state and federal law; and

1 (2) commission rules adopted under Subsection (c).

2 SECTION 14. Section 651.165(d), Health and Safety Code, is
3 amended to read as follows:

4 (d) A person whose license has been expired for one year or
5 more may ~~[not]~~ renew the license by:

6 (1) retaking and passing the applicable examination;

7 (2) paying any applicable fees, including a renewal
8 fee that is equal to two times the normally required renewal fee;
9 and

10 (3) completing any continuing education required
11 under Section 651.266. [~~The person may obtain a new license by~~
12 ~~complying with the requirements and procedures, including the~~
13 ~~examination requirements, for obtaining an original license.]~~

14 SECTION 15. Subchapter D, Chapter 651, Occupations Code, is
15 amended by adding Section 651.1655 to read as follows:

16 Sec. 651.1655. REINSTATEMENT OF SUSPENDED LICENSE. A
17 person whose license has been suspended may renew the license by
18 paying to the commission a renewal fee that is equal to two times
19 the normally required renewal fee.

20 SECTION 16. The heading to Section 651.267, Occupations
21 Code, is amended to read as follows:

22 Sec. 651.267. REISSUANCE OF REVOKED LICENSE.

23 SECTION 17. Sections 651.267(a) and (d), Occupations Code,
24 are amended to read as follows:

25 (a) On application, the commission may reissue a license
26 issued under this subchapter to a person whose license has been
27 [~~suspended or~~] revoked. An application to reissue a license may not

1 be made before the third [~~first~~] anniversary of the date of the
2 [~~suspension or~~] revocation.

3 (d) A license that has been revoked [~~or suspended for a~~
4 ~~period of five years or more~~] may be reinstated only after the
5 applicant:

6 (1) retakes and passes the applicable examination;

7 (2) pays a fee that is equal to two times the normally
8 required renewal fee; and

9 (3) satisfies any other commission requirements,
10 including any continuing education requirements under Section
11 651.266.

12 SECTION 18. Section 651.304(e), Occupations Code, is
13 amended to read as follows:

14 (e) The commission by rule shall prescribe reporting
15 requirements for provisional license holders. The commission shall
16 furnish report forms to be used by a provisional license holder.

17 SECTION 19. Sections 651.351(d) and (f), Occupations Code,
18 are amended to read as follows:

19 (d) A funeral establishment must:

20 (1) meet the building, fire safety, and health
21 standards and health ordinances of this state and of the
22 municipality in which the establishment is located;

23 (2) be located at a fixed place that is not tax-exempt
24 property or a cemetery;

25 (3) include facilities in which funeral services may
26 be conducted;

27 (4) have access to rolling stock consisting of at

1 least one motor hearse;

2 (5) include a preparation room containing the
3 facilities, equipment, and supplies required by commission rule to
4 ensure the provision of adequate embalming services;

5 (6) include other facilities as necessary to comply
6 with the sanitary codes of this state and of the municipality in
7 which the room is located; and

8 (7) include a display containing sufficient
9 merchandise to permit reasonable selection, including at least five
10 adult caskets, two of which must be full-size and displayed in a
11 casket showroom.

12 (f) The least expensive casket displayed under Subsection
13 (d)(7) must be a full-size casket displayed in the same general
14 manner as the other full-size caskets are displayed. The three
15 adult caskets that are not required to be full-size under
16 Subsection (d)(7) may be displayed:

17 (1) in a partial panel display; or

18 (2) by video or brochure, online, or in any other
19 manner.

20 SECTION 20. Section 651.353(d), Occupations Code, is
21 amended to read as follows:

22 (d) This section does not apply to:

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

25 (2) an unincorporated association of plot owners not
26 operated for profit;

27 (3) a church, a religious society or denomination, or

1 an entity solely administering the temporalities of a church or
2 religious society or denomination; ~~[or]~~

3 (4) a public cemetery owned by this state, a county, or
4 a municipality; or

5 (5) a perpetual care cemetery.

6 SECTION 21. Sections 651.354(a), (c), and (d), Occupations
7 Code, are amended to read as follows:

8 (a) The commission shall mail written notice to a cemetery
9 or funeral establishment of the impending expiration of the
10 establishment's license not later than the 30th day before the
11 expiration date of the license. The ~~[Except as provided by~~
12 ~~Subsection (d), the]~~ notice must state that:

13 (1) to renew the license, the cemetery or funeral
14 establishment must pay the renewal fee not later than the license
15 expiration date ~~[September 30]~~; and

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

18 (c) If the license is expired for longer than 30 days, the
19 cemetery or funeral establishment ~~[may not renew the license and]~~
20 may not operate as a cemetery or funeral establishment until the
21 renewal fee and the late payment penalty are paid ~~[establishment is~~
22 ~~issued a new license in the manner provided for issuing an original~~
23 ~~license]~~.

24 (d) This section does not apply to ~~[To renew a license for]~~ a
25 perpetual care cemetery ~~[, the cemetery must submit a renewal on a~~
26 ~~form prescribed by the commission. The license is renewed on~~
27 ~~receipt of the form by the commission]~~.

1 SECTION 22. Subchapter H, Chapter 651, Occupations Code, is
2 amended by adding Section 651.355 to read as follows:

3 Sec. 651.355. PERPETUAL CARE CEMETERY REGISTRATION. (a)
4 The Texas Department of Banking shall provide annually to the
5 commission a list of perpetual care cemeteries, including the
6 address and other contact information for each cemetery. The
7 commission shall annually register each perpetual care cemetery on
8 that list.

9 (b) A perpetual care cemetery is not required to pay a
10 registration fee or renewal fee under this chapter.

11 SECTION 23. Section 651.405, Occupations Code, is amended
12 to read as follows:

13 Sec. 651.405. GENERAL [~~RETAIL~~] PRICE LIST; FUNERAL
14 ESTABLISHMENT. (a) "General [~~Retail~~] price list" means a printed
15 or typewritten list of the retail price of items or services
16 provided by a funeral establishment and must include the retail
17 price of:

18 (1) transferring a deceased person to the funeral
19 establishment;

20 (2) embalming;

21 (3) using a funeral establishment facility for viewing
22 the deceased;

23 (4) using a funeral establishment facility for funeral
24 services;

25 (5) using a hearse;

26 (6) using a limousine;

27 (7) caskets, which may be provided at a range of retail

1 prices;

2 (8) outer enclosures, which may be provided at a range
3 of retail prices; and

4 (9) the basic services of the funeral director and
5 other [~~itemized services provided by the~~] funeral establishment
6 staff.

7 (b) A general [~~retail~~] price list must contain the name,
8 address, and telephone number of the funeral establishment, the
9 effective date for the stated prices, and the following printed
10 notice: "The goods and services shown below are those we can
11 provide to our customers. You may choose only the items you desire.
12 However, any funeral arrangements you select will include a charge
13 for our basic services and overhead. If legal or other requirements
14 mean you must buy any items you did not specifically ask for, we
15 will explain the reason in writing on the statement we provide
16 describing the funeral goods and services you selected."

17 SECTION 24. Section 651.4055, Occupations Code, is amended
18 to read as follows:

19 Sec. 651.4055. GENERAL [~~RETAIL~~] PRICE LIST; CEMETERY OR
20 CREMATORY. (a) In this section, "general [~~retail~~] price list"
21 means a printed or typewritten list of the retail price of items or
22 services provided by a cemetery or crematory.

23 (b) A general [~~retail~~] price list must contain:

24 (1) the name, address, and telephone number of the
25 cemetery or crematory;

26 (2) the effective date for the stated prices;

27 (3) notice required by Subsection (c); and

1 (4) any other items that the commission may by rule
2 require.

3 (c) The general [~~retail~~] price list must contain the
4 following printed notice: "The goods and services shown below are
5 those we can provide to our customers. You may choose only the
6 items you desire. If legal or other requirements mean you must buy
7 any items you did not specifically ask for, we will explain the
8 reason in writing on the statement we provide describing the goods
9 and services you selected."

10 SECTION 25. Sections 651.406(a) and (d), Occupations Code,
11 are amended to read as follows:

12 (a) A purchase agreement must state:

13 (1) the name, address, and telephone number of the
14 funeral establishment;

15 (2) the amount paid or owed to another person by the
16 funeral establishment on behalf of the customer for a cash advance
17 item and each fee charged the customer for a cash advance item [~~the~~
18 ~~cost of advancing funds or becoming indebted to another person on~~
19 ~~behalf of the customer~~];

20 (3) the printed notice required by Subsection (b);

21 (4) the name, mailing address, and telephone number of
22 the commission; and

23 (5) a statement that complaints may be directed to the
24 commission.

25 (d) If the customer selects a package arrangement based on
26 unit pricing, the itemization requirement is satisfied by providing
27 a purchase agreement that discloses the total amount of [~~itemizes~~]

1 the discount provided by the package arrangement.

2 SECTION 26. Sections 651.4065(a) and (d), Occupations Code,
3 are amended to read as follows:

4 (a) A purchase agreement must state:

5 (1) the name, address, and telephone number of the
6 cemetery or crematory;

7 (2) the amount paid or owed to another person by the
8 cemetery or crematory on behalf of the customer for a cash advance
9 item and each fee charged the customer for a cash advance item [~~the~~
10 ~~cost of advancing funds or becoming indebted to another person on~~
11 ~~behalf of the customer~~];

12 (3) the printed notice required by Subsection (b);

13 (4) the name, mailing address, and telephone number of
14 the commission;

15 (5) a statement that complaints may be directed to the
16 commission; and

17 (6) any other items that the commission may by rule
18 require.

19 (d) If the customer selects a package arrangement based on
20 unit pricing, the itemization requirement is satisfied by providing
21 a purchase agreement that discloses the total amount of [~~itemizes~~]
22 the discount provided by the package arrangement.

23 SECTION 27. Section 651.454(a), Occupations Code, is
24 amended to read as follows:

25 (a) A person violates this chapter if the person, in
26 arranging for funeral services or merchandise, fails to:

27 (1) provide a prospective customer at the beginning of

1 the arrangement process with a copy of the brochure required by
2 Section 651.404;

3 (2) provide to a prospective customer inquiring in
4 person about any funeral service or merchandise a general [~~retail~~]
5 price list for the prospective customer to keep;

6 (3) explain to a prospective customer that a
7 contractual agreement for funeral services or merchandise may not
8 be entered into before a general [~~retail~~] price list is provided to
9 the prospective customer; or

10 (4) provide general price information by telephone
11 within a reasonable time.

12 SECTION 28. Subchapter J, Chapter 651, Occupations Code, is
13 amended by adding Section 651.461 to read as follows:

14 Sec. 651.461. DEFENSE TO VIOLATION. A person licensed
15 under this chapter does not violate this chapter by engaging in
16 conduct regarding funeral arrangements under the direction of a
17 person who:

18 (1) represents to the license holder that the person
19 is authorized to make funeral arrangements for the deceased; and

20 (2) provides written directions to the license holder
21 in the manner provided by Section 711.002, Health and Safety Code.

22 SECTION 29. Section 651.507(a), Occupations Code, is
23 amended to read as follows:

24 (a) The commission or an administrative law judge employed
25 by the State Office of Administrative Hearings shall review each
26 disciplinary proceeding to determine whether the license holder has
27 previously violated [~~committed~~] the same provision of this chapter

1 or rule adopted under this chapter [~~type of violation on one or more~~
2 ~~previous occasions~~]. If it is determined that the license holder
3 has previously violated [~~committed~~] the same provision of this
4 chapter or rule adopted under this chapter [~~type of violation~~], the
5 commission or administrative law judge shall impose a disciplinary
6 action that is more severe than that imposed on the previous
7 occasion.

8 SECTION 30. Section 651.658(d), Occupations Code, is
9 amended to read as follows:

10 (d) If the license is expired for longer than 30 days, the
11 crematory establishment may not operate a crematory until the
12 renewal fee and late payment penalty are paid [~~A person may not~~
13 ~~renew a license that has been expired for more than 30 days. A~~
14 ~~person holding a license that has been expired for more than 30 days~~
15 ~~must apply for a new license as required by this subchapter to~~
16 ~~conduct a crematory business~~].

17 SECTION 31. The following are repealed:

- 18 (1) Section 716.004(b), Health and Safety Code; and
19 (2) Sections 651.304(b) and (c), 651.651(3), and
20 651.656(d), Occupations Code.

21 SECTION 32. Section 711.004(m), Health and Safety Code, as
22 added by this Act, applies only to costs incurred as a result of an
23 error that occurs on or after the effective date of this Act. Costs
24 incurred as a result of an error that occurred before the effective
25 date of this Act is governed by the law in effect at the time the
26 error occurred, and the former law is continued in effect for that
27 purpose.

1 SECTION 33. Sections 651.165(d), 651.354, and 651.658(d),
2 Occupations Code, as amended by this Act, apply only to a license
3 that expires on or after the effective date of this Act. A license
4 that expired before the effective date of this Act is governed by
5 the law in effect at the time the license expired, and the former
6 law is continued in effect for that purpose.

7 SECTION 34. Section 651.1655, Occupations Code, as added by
8 this Act, applies only to a license suspended on or after the
9 effective date of this Act. A license suspended before the
10 effective date of this Act is governed by the law in effect at the
11 time the license was suspended, and the former law is continued in
12 effect for that purpose.

13 SECTION 35. Section 651.267, Occupations Code, as amended
14 by this Act, applies only to a license revoked on or after the
15 effective date of this Act. A license revoked before the effective
16 date of this Act is governed by the law in effect at the time the
17 license was revoked, and the former law is continued in effect for
18 that purpose.

19 SECTION 36. Not later than January 1, 2006, the Texas
20 Department of Banking shall provide the initial list of perpetual
21 care cemeteries to the Texas Funeral Service Commission as required
22 by Section 651.355, Occupations Code, as added by this Act.

23 SECTION 37. Sections 651.406 and 651.4065, Occupations
24 Code, as amended by this Act, apply only to a purchase agreement
25 entered into on or after the effective date of this Act. A purchase
26 agreement entered into before the effective date of this Act is
27 governed by the law in effect on the date the agreement was entered

1 into, and the former law is continued in effect for that purpose.

2 SECTION 38. This Act takes effect September 1, 2005.