

By: Chisum

H.B. No. 1288

A BILL TO BE ENTITLED

AN ACT

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

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

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

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

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

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

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

(f) A cemetery organization may not resell the exclusive right of sepulture in a plot unless the exclusive right of sepulture has been reacquired by the cemetery organization. A sanction or other penalty may not be imposed on a cemetery organization that 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. Except as
21 [~~otherwise~~] provided by Section 716.054 [~~in this chapter~~], a
22 crematory establishment may not cremate deceased human remains
23 until it receives:

24 (1) a cremation authorization form signed by:
25 (A) an authorizing agent; and
26 (B) a funeral director of the funeral
27 establishment that contracted to provide for the cremation; and

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

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

5 (a) A cremation authorization form must:

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

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

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

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

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

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

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

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

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

1 (6) declare that to their knowledge the human remains
2 do not contain a pacemaker or any other material or implant that may
3 potentially be hazardous or cause damage to the cremation chamber
4 or the person performing the cremation;

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

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

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

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

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

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

24 SECTION 8. Subchapter B, Chapter 716, Health and Safety
25 Code, is amended by adding Section 716.054 to read as follows:

26 Sec. 716.054. EXCEPTION; WRITTEN DIRECTIONS. (a) This
27 section applies and a cremation authorization form is not required

1 under this chapter if:

2 (1) the deceased person has left written directions
3 for the disposition by cremation of the deceased person's human
4 remains as provided by Section 711.002(g); and

5 (2) the authorizing agent refuses for any reason to
6 sign a cremation authorization form.

7 (b) The crematory establishment may cremate the deceased
8 person's human remains without receipt of a cremation authorization
9 form signed by the authorizing agent if:

10 (1) cremation costs are paid; and

11 (2) the authorizing agent provides positive written
12 identification that the human remains to be cremated are the human
13 remains of the deceased person.

14 (c) An authorizing agent shall notify the funeral director
15 in writing of the presence of a pacemaker or other potentially
16 hazardous implant in the human remains. If the authorizing agent
17 fails to make this notification:

18 (1) the funeral director does not have a duty to ensure
19 that a pacemaker or other potentially hazardous implant is removed
20 from the human remains before delivering the remains to a crematory
21 establishment; and

22 (2) the authorizing agent is liable to the crematory
23 establishment in a civil action for any damages resulting from
24 cremation of the remains containing the pacemaker or other
25 potentially hazardous implant.

26 SECTION 9. Section 716.102(a), Health and Safety Code, is
27 amended to read as follows:

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

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

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

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

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

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

14 (6) the name of the deceased person.

15 SECTION 10. Section 716.103, Health and Safety Code, is
16 amended to read as follows:

17 Sec. 716.103. IDENTIFICATION RESPONSIBILITY OF CREMATORY.

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

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

27 SECTION 11. Section 716.104(a), Health and Safety Code, is

1 amended to read as follows:

2 (a) Except as provided by Section 716.054, a [A] funeral
3 director or funeral establishment shall provide a signed written
4 statement to a crematory establishment that the human remains
5 delivered to the crematory establishment were positively
6 identified as the deceased person listed on the cremation
7 authorization form by the authorizing agent or a representative of
8 the authorizing agent delegated as provided by Section 716.053.

9 SECTION 12. Section 716.152(d), Health and Safety Code, is
10 amended to read as follows:

11 (d) To the extent practicable, the crematory establishment
12 shall remove all recoverable cremation residue from the cremation
13 chamber following cremation and pulverize any bone fragments to a
14 particle size of one-eighth inch or less as necessary. The
15 crematory establishment shall remove and dispose of any other
16 material included with the residue.

17 SECTION 13. Sections 716.156(a) and (b), Health and Safety
18 Code, are amended to read as follows:

19 (a) A crematory establishment shall:

20 (1) release the cremated remains to a representative
21 of the funeral establishment that delivered the deceased human
22 remains to the crematory establishment;

23 (2) release the cremated remains to the person
24 authorized to receive the remains on the cremation authorization
25 form; ~~or~~

26 (3) ship the remains to the shipping address provided
27 by the authorizing agent on the cremation authorization form not

1 later than the 30th day following the date of cremation; or

2 (4) release the cremated remains according to written
3 directions for the disposition by cremation of the deceased
4 person's human remains as provided by Section 711.002(g).

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

7 (1) the date and time of release;

8 (2) the printed name of the person who receives the
9 cremated remains;

10 (3) the name of the funeral establishment that [~~or~~
11 ~~other entity who~~] contracted to provide for the cremation;

12 (4) the printed name of the person who released the
13 cremated remains on behalf of the crematory establishment; and

14 (5) the name of the deceased person.

15 SECTION 14. Subchapter E, Chapter 716, Health and Safety
16 Code, is amended by adding Section 716.204 to read as follows:

17 Sec. 716.204. IMMUNITY FROM CRIMINAL AND CIVIL LIABILITY;
18 WRITTEN DIRECTIONS. (a) In this section:

19 (1) "Cemetery organization" has the meaning assigned
20 by Section 711.001.

21 (2) "Embalmer" has the meaning assigned by Section
22 651.001, Occupations Code.

23 (b) If Section 716.054(a) applies, a cemetery organization,
24 a business operating a crematory or columbarium, a funeral
25 director, an embalmer, or a funeral establishment is not criminally
26 liable or liable in a civil action for:

27 (1) cremating the human remains of a deceased person;

1 or
2 (2) carrying out the written directions of the
3 deceased person.

4 SECTION 15. Section 716.304, Health and Safety Code, is
5 amended to read as follows:

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

12 SECTION 16. Section 716.351(a), Health and Safety Code, is
13 amended to read as follows:

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

15 (1) cremates human remains without receipt of:

16 (A) a cremation authorization form signed by an
17 authorizing agent; or

18 (B) written directions for the disposition by
19 cremation of the deceased person's human remains as provided in
20 Section 711.002(g);

21 (2) signs a cremation authorization form with actual
22 knowledge that the form contains false or incorrect information; or

23 (3) represents to the public that the person may
24 cremate human remains without being licensed as provided by
25 Subchapter N, Chapter 651, Occupations Code.

26 SECTION 17. Section 651.154(a), Occupations Code, is
27 amended to read as follows:

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

3 (1) the funeral director's and embalmer's application
4 fee, license fee, duplicate license fee, and reciprocal license
5 fee; and

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

8 SECTION 18. Section 651.156, Occupations Code, is amended
9 by adding Subsection (d) to read as follows:

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

12 (1) state and federal law; and

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

14 SECTION 19. Section 651.165(d), Occupations Code, is
15 amended to read as follows:

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

18 (1) retaking and passing the applicable examination;

19 (2) paying any applicable fees, including a renewal
20 fee that is equal to two times the normally required renewal fee;
21 and

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

26 SECTION 20. Subchapter D, Chapter 651, Occupations Code, is
27 amended by adding Section 651.1655 to read as follows:

1 Sec. 651.1655. REINSTATEMENT OF SUSPENDED LICENSE. A
2 person whose license has been suspended may renew the license by
3 paying to the commission a renewal fee that is equal to two times
4 the normally required renewal fee.

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

7 Sec. 651.267. REISSUANCE OF REVOKED LICENSE.

8 SECTION 22. Sections 651.267(a) and (d), Occupations Code,
9 are amended to read as follows:

10 (a) On application, the commission may reissue a license
11 issued under this subchapter to a person whose license has been
12 [~~suspended or~~] revoked. An application to reissue a license may not
13 be made before the third [~~first~~] anniversary of the date of the
14 [~~suspension or~~] revocation.

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

18 (1) retakes and passes the applicable examination;

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

21 (3) satisfies any other commission requirements,
22 including any continuing education requirements under Section
23 651.266.

24 SECTION 23. Section 651.304(e), Occupations Code, is
25 amended to read as follows:

26 (e) The commission by rule shall prescribe reporting
27 requirements for provisional license holders. The commission shall

1 furnish report forms to be used by a provisional license holder.

2 SECTION 24. Sections 651.351(d) and (f), Occupations Code,
3 are amended to read as follows:

4 (d) A funeral establishment must:

5 (1) meet the building, fire safety, and health
6 standards and health ordinances of this state and of the
7 municipality in which the establishment is located;

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

10 (3) include facilities in which funeral services may
11 be conducted;

12 (4) have access to rolling stock consisting of at
13 least one motor hearse;

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

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

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

24 (f) The least expensive casket displayed under Subsection
25 (d)(7) must be a full-size casket displayed in the same general
26 manner as the other full-size caskets are displayed. The three
27 adult caskets that are not required to be full-size under

1 Subsection (d)(7) may be displayed:

2 (1) in a partial panel display; or

3 (2) by video or brochure, online, or in any other
4 manner.

5 SECTION 25. Section 651.353(d), Occupations Code, is
6 amended to read as follows:

7 (d) This section does not apply to:

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

10 (2) an unincorporated association of plot owners not
11 operated for profit;

12 (3) a church, a religious society or denomination, or
13 an entity solely administering the temporalities of a church or
14 religious society or denomination; ~~[or]~~

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

17 (5) a perpetual care cemetery.

18 SECTION 26. Sections 651.354(a), (c), and (d), Occupations
19 Code, are amended to read as follows:

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

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

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

3 (c) If the license is expired for longer than 30 days, the
4 cemetery or funeral establishment [~~may not renew the license and~~
5 may not operate as a cemetery or funeral establishment until the
6 renewal fee and the late payment penalty are paid [~~establishment is~~
7 ~~issued a new license in the manner provided for issuing an original~~
8 ~~license~~].

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

13 SECTION 27. Subchapter H, Chapter 651, Occupations Code, is
14 amended by adding Section 651.355 to read as follows:

15 Sec. 651.355. PERPETUAL CARE CEMETERY REGISTRATION. (a)
16 The Texas Department of Banking shall provide annually to the
17 commission a list of perpetual care cemeteries, including the
18 address and other contact information for each cemetery. The
19 commission shall annually register each perpetual care cemetery on
20 that list.

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

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

25 Sec. 651.461. DEFENSE TO VIOLATION. A person licensed
26 under this chapter does not violate this chapter by engaging in
27 conduct regarding funeral arrangements under the direction of a

1 person who:

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

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

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

8 (a) The commission or an administrative law judge employed
9 by the State Office of Administrative Hearings shall review each
10 disciplinary proceeding to determine whether the license holder has
11 previously violated [~~committed~~] the same provision of this chapter
12 or rule adopted under this chapter [~~type of violation on one or more~~
13 ~~previous occasions~~]. If it is determined that the license holder
14 has previously violated [~~committed~~] the same provision of this
15 chapter or rule adopted under this chapter [~~type of violation~~], the
16 commission or administrative law judge shall impose a disciplinary
17 action that is more severe than that imposed on the previous
18 occasion.

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

21 (d) If the license is expired for longer than 30 days, the
22 crematory establishment may not operate a crematory until the
23 renewal fee and late payment penalty are paid [~~A person may not~~
24 ~~renew a license that has been expired for more than 30 days. A~~
25 ~~person holding a license that has been expired for more than 30 days~~
26 ~~must apply for a new license as required by this subchapter to~~
27 ~~conduct a crematory business~~].

1 SECTION 31. The following are repealed:

2 (1) Section 716.004(b), Health and Safety Code; and

3 (2) Sections 651.304(b) and (c), 651.651(3), and
4 651.656(d), Occupations Code.

5 SECTION 32. Section 711.004(m), Health and Safety Code, as
6 added by this Act, applies only to costs incurred as a result of an
7 error that occurs on or after the effective date of this Act. Costs
8 incurred as a result of an error that occurred before the effective
9 date of this Act is governed by the law in effect at the time the
10 error occurred, and the former law is continued in effect for that
11 purpose.

12 SECTION 33. Sections 651.165(d), 651.354, and 651.658(d),
13 Occupations Code, as amended by this Act, apply only to a license
14 that expires on or after the effective date of this Act. A license
15 that expired before the effective date of this Act is governed by
16 the law in effect at the time the license expired, and the former
17 law is continued in effect for that purpose.

18 SECTION 34. Section 651.1655, Occupations Code, as added by
19 this Act, applies only to a license suspended on or after the
20 effective date of this Act. A license suspended before the
21 effective date of this Act is governed by the law in effect at the
22 time the license was suspended, and the former law is continued in
23 effect for that purpose.

24 SECTION 35. Section 651.267, Occupations Code, as amended
25 by this Act, applies only to a license revoked on or after the
26 effective date of this Act. A license revoked before the effective
27 date of this Act is governed by the law in effect at the time the

1 license was revoked, and the former law is continued in effect for
2 that purpose.

3 SECTION 36. Not later than January 1, 2008, the Texas
4 Department of Banking shall provide the initial list of perpetual
5 care cemeteries to the Texas Funeral Service Commission as required
6 by Section 651.355, Occupations Code, as added by this Act.

7 SECTION 37. This Act takes effect September 1, 2007.