

1-1 By: Janek S.B. No. 623
1-2 (In the Senate - Filed February 13, 2007; February 27, 2007,
1-3 read first time and referred to Committee on Health and Human
1-4 Services; April 27, 2007, reported adversely, with favorable
1-5 Committee Substitute by the following vote: Yeas 8, Nays 0;
1-6 April 27, 2007, sent to printer.)

1-7 COMMITTEE SUBSTITUTE FOR S.B. No. 623 By: Janek

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

1-10 relating to the regulation of funeral homes, cemeteries, and
1-11 crematories.

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

1-13 SECTION 1. Section 711.004, Health and Safety Code, is
1-14 amended by adding Subsection (m) to read as follows:

1-15 (m) If a removal of remains is made to correct an error by a
1-16 cemetery organization, the cemetery organization is responsible
1-17 for all costs involved in the removal and reinterment of the
1-18 remains.

1-19 SECTION 2. Subsection (b), Section 711.012, Health and
1-20 Safety Code, is amended to read as follows:

1-21 (b) The Texas Funeral Service Commission may adopt rules,
1-22 establish procedures, and prescribe forms to enforce and administer
1-23 Sections 711.003, 711.008, 711.010, 711.011, 711.021-711.035,
1-24 711.038, 711.0395, 711.041, 711.042, 711.061, and 711.062 relating
1-25 to cemeteries that are not perpetual care cemeteries.

1-26 SECTION 3. Section 711.038, Health and Safety Code, is
1-27 amended by adding Subsection (f) to read as follows:

1-28 (f) A cemetery organization may not resell the exclusive
1-29 right of sepulture in a plot unless the exclusive right of sepulture
1-30 has been reacquired by the cemetery organization. A sanction or
1-31 other penalty may not be imposed on a cemetery organization that
1-32 violates this subsection unless:

1-33 (1) the state agency authorized to enforce this
1-34 section provides the cemetery organization written notice of the
1-35 violation; and

1-36 (2) the cemetery organization does not correct the
1-37 violation before the 91st day after the date on which the cemetery
1-38 organization received the notice.

1-39 SECTION 4. Subchapter C, Chapter 711, Health and Safety
1-40 Code, is amended by adding Section 711.0395 to read as follows:

1-41 Sec. 711.0395. MULTIPLE INTERMENTS IN SAME PLOT. A
1-42 cemetery organization may not make more than one interment in a plot
1-43 unless each owner of the plot consents to the interment.

1-44 SECTION 5. Subchapter A, Chapter 716, Health and Safety
1-45 Code, is amended by adding Section 716.0035 to read as follows:

1-46 Sec. 716.0035. ACCEPTANCE OF REMAINS. A crematory
1-47 establishment may accept deceased human remains for refrigeration
1-48 before it receives authorization to cremate the remains under
1-49 Subchapter B.

1-50 SECTION 6. Subchapter B, Chapter 716, Health and Safety
1-51 Code, is amended by adding Section 716.054 to read as follows:

1-52 Sec. 716.054. EXCEPTION; WRITTEN DIRECTIONS. (a) This
1-53 section applies and a cremation authorization form is not required
1-54 under this chapter if:

1-55 (1) the deceased person has left written directions
1-56 for the disposition by cremation of the deceased person's human
1-57 remains as provided by Section 711.002(g); and

1-58 (2) the authorizing agent refuses for any reason to
1-59 sign a cremation authorization form.

1-60 (b) The crematory establishment may cremate the deceased
1-61 person's human remains without receipt of a cremation authorization
1-62 form signed by the authorizing agent if:

1-63 (1) cremation costs are paid; and

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

SECTION 7. Section 716.103, Health and Safety Code, is amended to read as follows:

Sec. 716.103. IDENTIFICATION RESPONSIBILITY OF CREMATORY.

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

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

SECTION 8. Subsection (a), Section 716.104, Health and Safety Code, is amended to read as follows:

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

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

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

SECTION 10. Subsection (a), Section 716.156, Health and Safety Code, is amended to read as follows:

(a) A crematory establishment shall:
(1) release the cremated remains to a representative of the funeral establishment that delivered the deceased human remains to the crematory establishment;

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

(3) ship the remains to the shipping address provided by the authorizing agent on the cremation authorization form not later than the 30th day following the date of cremation; or

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

SECTION 11. Subchapter E, Chapter 716, Health and Safety Code, is amended by adding Section 716.204 to read as follows:

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

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

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

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

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

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

SECTION 12. Section 716.304, Health and Safety Code, is amended to read as follows:

Sec. 716.304. SCATTERING REMAINS. A person may scatter cremated remains over uninhabited public land, over a public waterway or sea, or on the private property of a consenting owner~~[-~~
~~if the remains are reduced to a particle size of one-eighth inch or~~

~~less~~]. Unless the container is biodegradable, the cremated remains must be removed from the container before being scattered.

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

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

(1) cremates human remains without receipt of:

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

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

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

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

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

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

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

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

SECTION 15. Section 651.156, Occupations Code, is amended by adding Subsection (d) to read as follows:

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

(1) state and federal law; and

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

SECTION 16. Subsection (d), Section 651.165, Occupations Code, is amended to read as follows:

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

(1) retaking and passing the applicable examination;

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

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

SECTION 17. Subchapter D, Chapter 651, Occupations Code, is amended by adding Section 651.1655 to read as follows:

Sec. 651.1655. REINSTATEMENT OF SUSPENDED LICENSE. A person whose license has been suspended may renew the license by paying to the commission a renewal fee that is equal to two times the normally required renewal fee in addition to any penalty assessed by the commission.

SECTION 18. The heading to Section 651.267, Occupations Code, is amended to read as follows:

Sec. 651.267. REISSUANCE OF REVOKED LICENSE.

SECTION 19. Subsections (a) and (d), Section 651.267, Occupations Code, are amended to read as follows:

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

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

(1) retakes and passes the applicable examination;

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

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

SECTION 20. Subsection (e), Section 651.304, Occupations Code, is amended to read as follows:

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

SECTION 21. Subsections (d) and (f), Section 651.351, Occupations Code, are amended to read as follows:

(d) A funeral establishment must:

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

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

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

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

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

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

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

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

(1) in a partial panel display; or

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

SECTION 22. Subsection (d), Section 651.353, Occupations Code, is amended to read as follows:

(d) This section does not apply to:

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

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

(3) a church, a religious society or denomination, or an entity solely administering the temporalities of a church or religious society or denomination; ~~or~~

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

(5) a perpetual care cemetery.

SECTION 23. Subsections (a), (c), and (d), Section 651.354, Occupations Code, are amended to read as follows:

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

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

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

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

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

~~receipt of the form by the commission].~~

SECTION 24. Subchapter H, Chapter 651, Occupations Code, is amended by adding Section 651.355 to read as follows:

Sec. 651.355. PERPETUAL CARE CEMETERY REGISTRATION.

(a) The Texas Department of Banking shall provide annually to the commission a list of perpetual care cemeteries, including the address and other contact information for each cemetery. The commission shall annually register each perpetual care cemetery on that list.

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

SECTION 25. Subchapter J, Chapter 651, Occupations Code, is amended by adding Section 651.461 to read as follows:

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

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

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

SECTION 26. Subsection (a), Section 651.507, Occupations Code, is amended to read as follows:

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

SECTION 27. Subsection (d), Section 651.658, Occupations Code, is amended to read as follows:

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

SECTION 28. The following are repealed:

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

(2) Subsections (b) and (c), Section 651.304, Subdivision (3), Section 651.651, and Subsection (d), Section 651.656, Occupations Code.

SECTION 29. Subsection (m), Section 711.004, Health and Safety Code, as added by this Act, applies only to costs incurred as a result of an error that occurs on or after the effective date of this Act. Costs incurred as a result of an error that occurred before the effective date of this Act is governed by the law in effect at the time the error occurred, and the former law is continued in effect for that purpose.

SECTION 30. Subsection (d), Section 651.165, Section 651.354, and Subsection (d), Section 651.658, Occupations Code, as amended by this Act, apply only to a license that expires on or after the effective date of this Act. A license that expired before the effective date of this Act is governed by the law in effect at the time the license expired, and the former law is continued in effect for that purpose.

SECTION 31. Section 651.1655, Occupations Code, as added by this Act, applies only to a license suspended on or after the effective date of this Act. A license suspended before the effective date of this Act is governed by the law in effect at the time the license was suspended, and the former law is continued in effect for that purpose.

SECTION 32. Section 651.267, Occupations Code, as amended by this Act, applies only to a license revoked on or after the effective date of this Act. A license revoked before the effective date of this Act is governed by the law in effect at the time the license was revoked, and the former law is continued in effect for that purpose.

SECTION 33. Not later than January 1, 2008, the Texas Department of Banking shall provide the initial list of perpetual care cemeteries to the Texas Funeral Service Commission as required by Section 651.355, Occupations Code, as added by this Act.

SECTION 34. This Act takes effect September 1, 2007.

* * * * *