

1 AN ACT

2 relating to the regulation of funeral services, funeral homes,
3 cemeteries, and crematories; providing penalties.

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

5 SECTION 1. Subchapter F, Chapter 154, Finance Code, is
6 amended by adding Section 154.265 to read as follows:

7 Sec. 154.265. DEFAULT UNDER CERTAIN CONTRACTS. (a)

8 Notwithstanding any other law, the purchaser of a trust-funded
9 prepaid funeral benefits contract may not be considered in default
10 under the contract if:

11 (1) the purchaser has paid at least 85 percent of the
12 contract price; and

13 (2) the purchaser was unable to pay due to extenuating
14 financial circumstances.

15 (b) A funeral provider is not required to provide funeral
16 merchandise or services under a trust-funded prepaid funeral
17 benefits contract unless any remaining balance, including any
18 applicable finance charge, owed under the contract is paid before
19 the funeral service or the funeral provider agrees in writing to
20 another payment arrangement.

21 (c) This section does not affect a purchaser's right to
22 cancel a trust-funded prepaid funeral benefits contract.

23 SECTION 2. Subtitle B, Title 8, Health and Safety Code, is
24 amended by adding Chapter 695 to read as follows:

1 CHAPTER 695. IN-CASKET IDENTIFICATION

2 Sec. 695.001. DEFINITIONS. In this chapter:

3 (1) "Casket" means a container used to hold the
4 remains of a deceased person.

5 (2) "Commission" means the Texas Funeral Service
6 Commission.

7 Sec. 695.002. IDENTIFICATION OF DECEASED PERSON. The
8 commission shall ensure a casket contains identification of the
9 deceased person, including the person's name, date of birth, and
10 date of death.

11 Sec. 695.003. RULES. The commission may adopt rules to
12 enforce this chapter.

13 SECTION 3. Section 711.008(b), Health and Safety Code, is
14 amended to read as follows:

15 (b) Subsection (a) does not apply to:

16 (1) a cemetery heretofore established and operating;

17 (2) the establishment and use of a columbarium by an
18 organized religious society or sect that is exempt from income
19 taxation under Section 501(a), Internal Revenue Code of 1986, by
20 being listed under Section 501(c)(3) of that code, as part of or
21 attached to the principal church building owned by the society or
22 sect;

23 (3) the establishment and use of a columbarium:

24 (A) in a municipality with a population of at
25 least 1.8 million; and

26 (B) by an organized religious society or sect,
27 that is exempt from income taxation under Section 501(a), Internal

1 Revenue Code of 1986, by being listed under Section 501(c)(3) of
2 that code, on land that:

3 (i) is owned by the society or sect; and

4 (ii) is part of the campus on which an
5 existing principal church building is located; ~~[or]~~

6 (4) the establishment and use of a columbarium on the
7 campus of a private or independent institution of higher education,
8 as defined by Section 61.003, Education Code, that is wholly or
9 substantially controlled, managed, owned, or supported by or
10 otherwise affiliated with an organized religious society or sect
11 that is exempt from income taxation under Section 501(a), Internal
12 Revenue Code of 1986, by being listed under Section 501(c)(3) of
13 that code, if a place of worship is located on the campus; or

14 (5) the establishment and use of a mausoleum that is:

15 (A) constructed beneath the principal church
16 building owned by an organized religious society or sect that:

17 (i) is exempt from income taxation under
18 Section 501(a), Internal Revenue Code of 1986, by being listed
19 under Section 501(c)(3) of that code; and

20 (ii) has recognized religious traditions
21 and practices of interring the remains of ordained clergy in or
22 below the principal church building; and

23 (B) used only for the interment of the remains of
24 ordained clergy of that organized religious society or sect.

25 SECTION 4. Section 711.012(b), Health and Safety Code, is
26 amended to read as follows:

27 (b) The Texas Funeral Service Commission may adopt rules,

1 establish procedures, and prescribe forms to enforce and administer
2 Sections 711.003, 711.008, 711.010, 711.011, 711.021-711.035,
3 711.038, 711.0395, 711.041, 711.042, 711.052, 711.061, and 711.062
4 relating to cemeteries that are not perpetual care cemeteries.

5 SECTION 5. Section 711.038, Health and Safety Code, is
6 amended by adding Subsection (f) to read as follows:

7 (f) A cemetery organization may not resell the exclusive
8 right of sepulture in a plot unless the exclusive right of sepulture
9 has been reacquired by the cemetery organization. A sanction or
10 other penalty may not be imposed on a cemetery organization that
11 violates this subsection unless:

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

15 (2) the cemetery organization does not correct the
16 violation before the 91st day after the date on which the cemetery
17 organization received the notice.

18 SECTION 6. Subchapter C, Chapter 711, Health and Safety
19 Code, is amended by adding Section 711.0395 to read as follows:

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

23 SECTION 7. Section 711.041, Health and Safety Code, is
24 amended to read as follows:

25 Sec. 711.041. ACCESS TO CEMETERY. (a) Any person who
26 wishes to visit a cemetery or private burial grounds for which no
27 public ingress or egress is available shall have the right to

1 reasonable ingress and egress for the purpose of visiting the
2 cemetery or private burial grounds. This right of access extends
3 only to visitation during the [reasonable] hours determined by the
4 owner or owners of the lands under Subsection (b) or at a reasonable
5 time as provided by Subsection (c) and only for purposes usually
6 associated with cemetery visits.

7 (b) The owner or owners of the lands surrounding the
8 cemetery or private burial grounds may designate the routes of
9 reasonable ingress and egress and reasonable hours of availability.

10 (c) At a time other than the time provided by Subsection
11 (b), the owner or owners of the lands surrounding a cemetery or
12 private burial grounds must allow a person to enter and exit the
13 owner's land for the purpose of visiting the cemetery or private
14 burial grounds if:

15 (1) the person provides written notice to the owner or
16 owners of the lands surrounding the cemetery or private burial
17 grounds of the person's visit;

18 (2) the person provides the notice required by
19 Subdivision (1) not later than the 14th day before the date the
20 person wishes to visit the cemetery; and

21 (3) the time of the visit is reasonable.

22 SECTION 8. Subchapter D, Chapter 711, Health and Safety
23 Code, is amended by adding Section 711.0515 to read as follows:

24 Sec. 711.0515. INJUNCTIVE RELIEF. In addition to bringing
25 an action under Section 711.051, the attorney general at the
26 request of the Texas Funeral Service Commission may bring an action
27 for injunctive relief to enforce this chapter or a rule or order

1 adopted by the commission under this chapter.

2 SECTION 9. Subchapter D, Chapter 711, Health and Safety
3 Code, is amended by adding Section 711.0521 to read as follows:

4 Sec. 711.0521. ACCESS TO CEMETERIES; CRIMINAL PENALTIES.

5 (a) A person who is an individual, firm, association, corporation,
6 or municipality, or an officer, agent, or employee of an
7 individual, firm, association, corporation, or municipality,
8 commits an offense if the person interferes with a person's
9 reasonable right to ingress and egress under Section 711.041.

10 (b) An offense under this section is a Class C misdemeanor.

11 SECTION 10. Subchapter A, Chapter 716, Health and Safety
12 Code, is amended by adding Section 716.0035 to read as follows:

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

17 SECTION 11. Subchapter B, Chapter 716, Health and Safety
18 Code, is amended by adding Section 716.054 to read as follows:

19 Sec. 716.054. EXCEPTION; WRITTEN DIRECTIONS. (a) This
20 section applies and a cremation authorization form is not required
21 under this chapter if:

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

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

27 (b) The crematory establishment may cremate the deceased

1 person's human remains without receipt of a cremation authorization
2 form signed by the authorizing agent if:

- 3 (1) cremation costs are paid; and
4 (2) the authorizing agent provides positive written
5 identification that the human remains to be cremated are the human
6 remains of the deceased person.

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

9 Sec. 716.103. IDENTIFICATION RESPONSIBILITY OF CREMATORY.

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

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

19 SECTION 13. Section 716.104(a), Health and Safety Code, is
20 amended to read as follows:

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

1 SECTION 14. Section 716.152(d), Health and Safety Code, is
2 amended to read as follows:

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

9 SECTION 15. Section 716.156(a), Health and Safety Code, is
10 amended to read as follows:

11 (a) A crematory establishment shall:

12 (1) release the cremated remains to a representative
13 of the funeral establishment that delivered the deceased human
14 remains to the crematory establishment;

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

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

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

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

26 Sec. 716.204. IMMUNITY FROM CRIMINAL AND CIVIL LIABILITY;

27 WRITTEN DIRECTIONS. (a) In this section:

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

3 (2) "Embalmer" has the meaning assigned by Section
4 651.001, Occupations Code.

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

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

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

13 SECTION 17. Section 716.304, Health and Safety Code, is
14 amended to read as follows:

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

21 SECTION 18. Section 716.351(a), Health and Safety Code, is
22 amended to read as follows:

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

24 (1) cremates human remains without receipt of:

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

27 (B) written directions for the disposition by

1 cremation of the deceased person's human remains as provided in
2 Section 711.002(g);

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

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

8 SECTION 19. Section 651.154(a), Occupations Code, is
9 amended to read as follows:

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

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

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

17 SECTION 20. Section 651.156, Occupations Code, is amended
18 by adding Subsection (d) to read as follows:

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

21 (1) state and federal law; and

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

23 SECTION 21. Section 651.165(d), Occupations Code, is
24 amended to read as follows:

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

27 (1) retaking and passing the applicable examination;

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

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

8 SECTION 22. Subchapter D, Chapter 651, Occupations Code, is
9 amended by adding Section 651.1655 to read as follows:

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

15 SECTION 23. The heading to Section 651.267, Occupations
16 Code, is amended to read as follows:

17 Sec. 651.267. REISSUANCE OF REVOKED LICENSE.

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

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

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

- 1 (1) retakes and passes the applicable examination;
- 2 (2) pays a fee that is equal to two times the normally
- 3 required renewal fee; and
- 4 (3) satisfies any other commission requirements,
- 5 including any continuing education requirements under Section
- 6 651.266.

7 SECTION 25. Section 651.304(e), Occupations Code, is

8 amended to read as follows:

9 (e) The commission by rule shall prescribe reporting

10 requirements for provisional license holders. The commission shall

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

12 SECTION 26. Section 651.351, Occupations Code, is amended

13 by amending Subsections (d) and (f) and adding Subsection (i) to

14 read as follows:

15 (d) A funeral establishment must:

16 (1) meet the building, fire safety, and health

17 standards and health ordinances of this state and of the

18 municipality in which the establishment is located;

19 (2) except as provided by Subsection (i), be located

20 at a fixed place that is not tax-exempt property or a cemetery;

21 (3) include facilities in which funeral services may

22 be conducted;

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

24 least one motor hearse;

25 (5) include a preparation room containing the

26 facilities, equipment, and supplies required by commission rule to

27 ensure the provision of adequate embalming services;

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

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

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

13 (1) in a partial panel display; or

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

16 (i) Subsection (d)(2) does not apply to a funeral
17 establishment that is:

18 (1) located on the real property of a public junior
19 college; and

20 (2) operated in connection with an accredited
21 educational program in funeral services offered by the public
22 junior college.

23 SECTION 27. Section 651.353(d), Occupations Code, is
24 amended to read as follows:

25 (d) This section does not apply to:

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

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

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

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

8 (5) a perpetual care cemetery.

9 SECTION 28. Sections 651.354(a), (c), and (d), Occupations
10 Code, are amended to read as follows:

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

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

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

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

27 (d) This section does not apply to ~~[To renew a license for]~~ a

1 perpetual care cemetery [~~, the cemetery must submit a renewal on a~~
2 ~~form prescribed by the commission. The license is renewed on~~
3 ~~receipt of the form by the commission)].~~

4 SECTION 29. Subchapter H, Chapter 651, Occupations Code, is
5 amended by adding Section 651.355 to read as follows:

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

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

14 SECTION 30. Subchapter J, Chapter 651, Occupations Code, is
15 amended by adding Section 651.461 to read as follows:

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

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

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

24 SECTION 31. Section 651.507(a), Occupations Code, is
25 amended to read as follows:

26 (a) The commission or an administrative law judge employed
27 by the State Office of Administrative Hearings shall review each

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

10 SECTION 32. Section 651.658(d), Occupations Code, is
11 amended to read as follows:

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

19 SECTION 33. The following are repealed:

- 20 (1) Section 716.004(b), Health and Safety Code; and
21 (2) Sections 651.304(b) and (c), 651.651(3), and
22 651.656(d), Occupations Code.

23 SECTION 34. Section 154.265, Finance Code, as added by this
24 Act, applies only to a contract that is entered into on or after the
25 effective date of this Act. A contract entered into before the
26 effective date of this Act is governed by the law in effect on the
27 date the contract was entered into, and the former law is continued

1 in effect for that purpose.

2 SECTION 35. The change in law made by Section 711.0521,
3 Health and Safety Code, as added by this Act, applies only to an
4 offense committed on or after the effective date of this Act. An
5 offense committed before the effective date of this Act is covered
6 by the law in effect when the offense was committed, and the former
7 law is continued in effect for that purpose. For purposes of this
8 section, an offense was committed before the effective date of this
9 Act if any element of the offense was committed before that date.

10 SECTION 36. Sections 651.165(d), 651.354, and 651.658(d),
11 Occupations Code, as amended by this Act, apply only to a license
12 that expires on or after the effective date of this Act. A license
13 that expired before the effective date of this Act is governed by
14 the law in effect at the time the license expired, and the former
15 law is continued in effect for that purpose.

16 SECTION 37. Section 651.1655, Occupations Code, as added by
17 this Act, applies only to a license suspended on or after the
18 effective date of this Act. A license suspended before the
19 effective date of this Act is governed by the law in effect at the
20 time the license was suspended, and the former law is continued in
21 effect for that purpose.

22 SECTION 38. Section 651.267, Occupations Code, as amended
23 by this Act, applies only to a license revoked on or after the
24 effective date of this Act. A license revoked before the effective
25 date of this Act is governed by the law in effect at the time the
26 license was revoked, and the former law is continued in effect for
27 that purpose.

1 SECTION 39. Not later than January 1, 2010, the Texas
2 Department of Banking shall provide the initial list of perpetual
3 care cemeteries to the Texas Funeral Service Commission as required
4 by Section 651.355, Occupations Code, as added by this Act.

5 SECTION 40. This Act takes effect September 1, 2009.

President of the Senate

Speaker of the House

I certify that H.B. No. 1468 was passed by the House on April 22, 2009, by the following vote: Yeas 145, Nays 0, 1 present, not voting; and that the House concurred in Senate amendments to H.B. No. 1468 on May 18, 2009, by the following vote: Yeas 142, Nays 0, 2 present, not voting.

Chief Clerk of the House

I certify that H.B. No. 1468 was passed by the Senate, with amendments, on May 14, 2009, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

APPROVED: _____

Date

Governor