

By: Chisum

H.B. No. 1468

A BILL TO BE ENTITLED

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

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

5 SECTION 1. Section 711.012(b), Health and Safety Code, is
6 amended to read as follows:

7 (b) The Texas Funeral Service Commission may adopt rules,
8 establish procedures, and prescribe forms to enforce and administer
9 Sections 711.003, 711.008, 711.010, 711.011, 711.021-711.035,
10 711.038, 711.0395, 711.041, 711.042, 711.061, and 711.062 relating
11 to cemeteries that are not perpetual care cemeteries.

12 SECTION 2. Section 711.038, Health and Safety Code, is
13 amended by adding Subsection (f) to read as follows:

14 (f) A cemetery organization may not resell the exclusive
15 right of sepulture in a plot unless the exclusive right of sepulture
16 has been reacquired by the cemetery organization. A sanction or
17 other penalty may not be imposed on a cemetery organization that
18 violates this subsection unless:

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

22 (2) the cemetery organization does not correct the
23 violation before the 91st day after the date on which the cemetery
24 organization received the notice.

1 SECTION 3. Subchapter C, Chapter 711, Health and Safety
2 Code, is amended by adding Section 711.0395 to read as follows:

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

6 SECTION 4. Subchapter A, Chapter 716, Health and Safety
7 Code, is amended by adding Section 716.0035 to read as follows:

8 Sec. 716.0035. ACCEPTANCE OF REMAINS. A crematory
9 establishment may accept deceased human remains for refrigeration
10 before it receives authorization to cremate the remains under
11 Subchapter B.

12 SECTION 5. Subchapter B, Chapter 716, Health and Safety
13 Code, is amended by adding Section 716.054 to read as follows:

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

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

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

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

25 (1) cremation costs are paid; and

26 (2) the authorizing agent provides positive written
27 identification that the human remains to be cremated are the human

1 remains of the deceased person.

2 SECTION 6. Section 716.103, Health and Safety Code, is
3 amended to read as follows:

4 Sec. 716.103. IDENTIFICATION RESPONSIBILITY OF CREMATORY.

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

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

14 SECTION 7. Section 716.104(a), Health and Safety Code, is
15 amended to read as follows:

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

23 SECTION 8. Section 716.152(d), Health and Safety Code, is
24 amended to read as follows:

25 (d) To the extent practicable, the crematory establishment
26 shall remove all recoverable cremation residue from the cremation
27 chamber following cremation and pulverize any bone fragments to a

1 particle size of one-eighth inch or less as necessary. The
2 crematory establishment shall remove and dispose of any other
3 material included with the residue.

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

6 (a) A crematory establishment shall:

7 (1) release the cremated remains to a representative
8 of the funeral establishment that delivered the deceased human
9 remains to the crematory establishment;

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

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

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

19 SECTION 10. Subchapter E, Chapter 716, Health and Safety
20 Code, is amended by adding Section 716.204 to read as follows:

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

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

25 (2) "Embalmer" has the meaning assigned by Section
26 651.001, Occupations Code.

27 (b) If Section 716.054(a) applies, a cemetery organization,

1 a business operating a crematory or columbarium, a funeral
2 director, an embalmer, or a funeral establishment is not criminally
3 liable or liable in a civil action for:

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

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

8 SECTION 11. Section 716.304, Health and Safety Code, is
9 amended to read as follows:

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

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

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

19 (1) cremates human remains without receipt of:

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

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

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

27 (3) represents to the public that the person may

1 cremate human remains without being licensed as provided by
2 Subchapter N, Chapter 651, Occupations Code.

3 SECTION 13. Section 651.154(a), Occupations Code, is
4 amended to read as follows:

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

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

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

12 SECTION 14. Section 651.156, Occupations Code, is amended
13 by adding Subsection (d) to read as follows:

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

16 (1) state and federal law; and

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

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

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

22 (1) retaking and passing the applicable examination;

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

26 (3) completing any continuing education required
27 under Section 651.266. ~~[The person may obtain a new license by~~

1 ~~complying with the requirements and procedures, including the~~
2 ~~examination requirements, for obtaining an original license.]~~

3 SECTION 16. Subchapter D, Chapter 651, Occupations Code, is
4 amended by adding Section 651.1655 to read as follows:

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

10 SECTION 17. The heading to Section 651.267, Occupations
11 Code, is amended to read as follows:

12 Sec. 651.267. REISSUANCE OF REVOKED LICENSE.

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

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

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

23 (1) retakes and passes the applicable examination;
24 (2) pays a fee that is equal to two times the normally
25 required renewal fee; and

26 (3) satisfies any other commission requirements,
27 including any continuing education requirements under Section

1 651.266.

2 SECTION 19. Section 651.304(e), Occupations Code, is
3 amended to read as follows:

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

7 SECTION 20. Sections 651.351(d) and (f), Occupations Code,
8 are amended to read as follows:

9 (d) A funeral establishment must:

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

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

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

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

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

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

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

1 casket showroom.

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

7 (1) in a partial panel display; or

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

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

12 (d) This section does not apply to:

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

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

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

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

22 (5) a perpetual care cemetery.

23 SECTION 22. Sections 651.354(a), (c), and (d), Occupations
24 Code, are amended to read as follows:

25 (a) The commission shall mail written notice to a cemetery
26 or funeral establishment of the impending expiration of the
27 establishment's license not later than the 30th day before the

1 expiration date of the license. The [~~Except as provided by~~
2 ~~Subsection (d), the~~] notice must state that:

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

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

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

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

18 SECTION 23. Subchapter H, Chapter 651, Occupations Code, is
19 amended by adding Section 651.355 to read as follows:

20 Sec. 651.355. PERPETUAL CARE CEMETERY REGISTRATION. (a)
21 The Texas Department of Banking shall provide annually to the
22 commission a list of perpetual care cemeteries, including the
23 address and other contact information for each cemetery. The
24 commission shall annually register each perpetual care cemetery on
25 that list.

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

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

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

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

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

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

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

24 SECTION 26. Section 651.658(d), Occupations Code, is
25 amended to read as follows:

26 (d) If the license is expired for longer than 30 days, the
27 crematory establishment may not operate a crematory until the

1 renewal fee and late payment penalty are paid [~~A person may not~~
2 ~~renew a license that has been expired for more than 30 days. A~~
3 ~~person holding a license that has been expired for more than 30 days~~
4 ~~must apply for a new license as required by this subchapter to~~
5 ~~conduct a crematory business~~].

6 SECTION 27. The following are repealed:

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

8 (2) Sections 651.304(b) and (c), 651.651(3), and
9 651.656(d), Occupations Code.

10 SECTION 28. 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 29. 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 30. 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 31. 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 32. This Act takes effect September 1, 2009.