

By: Darby

H.B. No. 3401

A BILL TO BE ENTITLED

AN ACT

relating to regulation by the Texas Funeral Service Commission of the disposition of a deceased human body.

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

SECTION 1. Section 651.001(5), Occupations Code, is amended to read as follows:

(5) "First call" means the beginning of the relationship and duty of a funeral director to take charge of a dead human body and have the body prepared for burial or disposition by embalming, cremation, or another method. The term does not include:

(A) an ambulance call if the person dispatching the ambulance does not know whether a dead human body is to be picked up; or

(B) the removal of a dead human body ordered by a justice of the peace, a death investigator, local law enforcement, or a medical examiner for the purpose of performing an autopsy or inquest under Chapter 49, Code of Criminal Procedure.

SECTION 2. Section 651.060(b), Occupations Code, is amended to read as follows:

(b) The commission may not contract for outside ~~employ~~ legal counsel except as provided by Section 402.0212, Government Code. The commission may employ legal counsel for the commission.

SECTION 3. Subchapter D, Chapter 651, Occupations Code, is

1 amended by adding Sections 651.1521 and 651.1522 to read as
2 follows:

3 Sec. 651.1521. RULES REGARDING DISPOSITION OF BODY; FUNERAL
4 ARRANGEMENTS. (a) The commission shall adopt rules to establish a
5 maximum period for disposition of a dead human body. The rules must
6 provide an exception to the maximum period when additional time is
7 necessary for the conduct of an autopsy, inquest, or investigation.

8 (b) The commission shall adopt rules to prohibit funeral or
9 cremation arrangements from being made over the Internet or without
10 the signature of the purchaser.

11 (c) To protect the public health and safety, the commission
12 shall adopt rules to require a consultant who arranges for:

13 (1) the disposition of a dead human body by brokering
14 the funeral arrangements to hold a funeral director's license under
15 this chapter; or

16 (2) the cremation of a dead human body to hold a
17 license under this chapter.

18 Sec. 651.1522. RULES REGARDING METAL OBJECTS AND IMPLANTS.
19 The commission shall adopt rules on the disposal of metal objects
20 and other implants in a dead human body by funeral establishments or
21 crematories. The rules must comply with applicable state and
22 federal laws.

23 SECTION 4. Section 651.154, Occupations Code, is amended by
24 amending Subsection (a) and adding Subsection (d) to read as
25 follows:

26 (a) The commission shall set the following fees in amounts
27 reasonable and necessary to administer this chapter and other laws

1 under the commission's jurisdiction:

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

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

7 (d) The commission may charge a fee for a check issued to the
8 commission and returned for insufficient funds.

9 SECTION 5. Section 651.163, Occupations Code, is amended to
10 read as follows:

11 Sec. 651.163. REQUEST FOR ATTORNEY GENERAL'S OPINION. A
12 request for an opinion under Subchapter C, Chapter 402, Government
13 Code, must be approved by the presiding officer of the commission
14 [~~commissioners~~].

15 SECTION 6. Section 651.202, Occupations Code, is amended by
16 amending Subsections (a), (b), (d), (e), and (f) and adding
17 Subsection (g) to read as follows:

18 (a) The commission by rule shall establish methods by which
19 the legal next of kin or person authorized to make funeral
20 arrangements under Section 711.002, Health and Safety Code,
21 [~~consumers~~] and service recipients are notified of the name,
22 mailing address, and telephone number of the commission for the
23 purpose of directing complaints to the commission. The commission
24 may provide for that notice:

25 (1) on each license form, application, or written
26 contract for services of a person regulated under this chapter;

27 (2) on a sign prominently displayed in the place of

1 business of each person regulated under this chapter; or

2 (3) in a bill for service provided by a person
3 regulated under this chapter.

4 (b) The commission shall adopt rules concerning a complaint
5 filed under this section. The rules adopted under this subsection
6 must:

7 (1) establish procedures regarding the receipt,
8 investigation, and disposition of complaints;

9 (2) allow for an informal hearing process;

10 (3) establish a formal hearing process;

11 (4) ensure that the legal next of kin or person
12 authorized to make funeral arrangements under Section 711.002,
13 Health and Safety Code, and the service recipient have ~~[who filed~~
14 ~~the complaint has]~~ an opportunity to explain the allegations made
15 in the complaint;

16 (5) ensure that the license holder who is the subject
17 of the complaint has an opportunity to be heard regarding the
18 complaint; and

19 (6) establish procedures by which a commission
20 employee may dismiss a complaint, subject to approval by the
21 executive director or the executive director's designee, if the
22 investigation does not reveal a violation.

23 (d) The commission shall provide to the legal next of kin or
24 person authorized to make funeral arrangements under Section
25 711.002, Health and Safety Code, the service recipient, ~~[filing the~~
26 ~~complaint]~~ and ~~[to]~~ each person who is a subject of the complaint a
27 copy of the commission's policies and procedures relating to

1 complaint investigation and resolution, including an explanation
2 of the remedies that are available to the legal next of kin,
3 authorized person, or service recipient under this chapter and
4 information about other appropriate state or local agencies or
5 officials with which the legal next of kin, authorized person, or
6 service recipient may file a complaint.

7 (e) The commission, at least quarterly until final
8 disposition of the complaint, shall notify the legal next of kin or
9 person authorized to make funeral arrangements under Section
10 711.002, Health and Safety Code, the service recipient, [~~filing the~~
11 ~~complaint~~] and each person who is a subject of the complaint of the
12 status of the investigation unless the notice would jeopardize an
13 undercover investigation.

14 (f) The legal next of kin or person authorized to make
15 funeral arrangements under Section 711.002, Health and Safety Code,
16 and the service recipient who filed the complaint are [~~is~~] entitled
17 to attend any proceeding resulting from the complaint.

18 (g) A complaint against the holder of a license issued under
19 this chapter must be filed with the commission not later than the
20 second anniversary of the date of the act or omission alleged as the
21 ground for disciplinary action. This subsection does not
22 constitute a defense to an accusation alleging fraud or
23 misrepresentation as a ground for disciplinary action.

24 SECTION 7. Section 651.253(a), Occupations Code, is amended
25 to read as follows:

26 (a) To be eligible for a funeral director's license or an
27 embalmer's license, an applicant must:

- 1 (1) be at least 18 years of age;
- 2 (2) have graduated from an accredited high school or
3 passed an examination prescribed by the Texas Education Agency;
- 4 (3) have graduated from an accredited school or
5 college of mortuary science, except that an applicant for an
6 embalmer's license may hold an associate of applied science degree
7 conferred by an accredited school or college of mortuary science;
- 8 (4) unless the applicant holds a reciprocal embalmer's
9 license, have served as a provisional license holder for not less
10 than one year under the personal supervision and instruction of a
11 funeral director or embalmer, as applicable; and
- 12 (5) have successfully completed the applicable
13 written examination described by Section 651.255 or 651.256.

14 SECTION 8. Sections 651.302(a) and (b), Occupations Code,
15 are amended to read as follows:

16 (a) The commission shall issue a provisional license to
17 practice funeral directing to an applicant who:

- 18 (1) is at least 18 years of age;
- 19 (2) has completed the educational requirements of
20 Section 651.253 [~~or is enrolled in an accredited school or college~~
21 ~~of mortuary science~~];
- 22 (3) takes the written examination given by the
23 commission [~~is employed by a funeral director to learn funeral~~
24 ~~directing or embalming under the instruction and supervision of the~~
25 ~~funeral director~~];
- 26 (4) files an application for a provisional license on
27 a form provided by the commission and verified under oath by the

1 applicant; and

2 (5) pays any required application or license fee.

3 (b) The commission shall issue a provisional license to
4 practice embalming to an applicant who:

5 (1) is at least 18 years of age;

6 (2) has completed the educational requirements of
7 Section 651.253 [~~or is enrolled in an accredited school or college~~
8 ~~of mortuary science~~];

9 (3) takes the written examination given by the
10 commission;

11 (4) files an application for a provisional license;

12 (5) [~~(4)~~] pays any required application or license
13 fee; and

14 (6) [~~(5)~~] complies with the requirements of this
15 chapter and of the commission.

16 SECTION 9. Section 651.304(a), Occupations Code, is amended
17 to read as follows:

18 (a) The commission by rule shall define reporting
19 requirements for provisional license holders. On entering
20 employment with a funeral director or embalmer, a provisional
21 license holder shall immediately notify the commission of the name
22 and place of business of the funeral director or embalmer under whom
23 the provisional license holder will train. The funeral director or
24 embalmer shall sign the notification.

25 SECTION 10. Section 651.351(d), Occupations Code, is
26 amended to read as follows:

27 (d) A funeral establishment must:

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

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

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

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

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

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

16 (7) include a display containing sufficient
17 merchandise to permit reasonable selection, including at least five
18 adult caskets:

19 (A) two of which must be full-size and be the
20 least expensive on display; and

21 (B) three of which may be displayed in a quarter
22 panel display or through the use of computer generated graphics.

23 SECTION 11. Subchapter I, Chapter 651, Occupations Code, is
24 amended by adding Sections 651.4031 and 651.4032 to read as
25 follows:

26 Sec. 651.4031. DESIGNATION OF EMBALMER IN CHARGE; EFFECT
27 OF VIOLATION. (a) A commercial embalmers establishment as defined

1 by Section 651.352(a) shall:

2 (1) designate to the commission an embalmer in charge;

3 and

4 (2) promptly notify the commission of any change in
5 that designation.

6 (b) The embalmer in charge is directly responsible for the
7 embalming business of the commercial embalming establishment.

8 (c) The embalmer in charge is ultimately responsible for
9 compliance with the mortuary laws. The embalmer in charge may be
10 charged with a violation of this chapter if a violation occurs in
11 the commercial embalming establishment.

12 Sec. 651.4032. DESIGNATION OF OPERATOR IN CHARGE; EFFECT
13 OF VIOLATION. (a) A crematory shall:

14 (1) designate to the commission an operator in charge;

15 and

16 (2) promptly notify the commission of any change in
17 that designation.

18 (b) The operator in charge is directly responsible for the
19 business of the crematory.

20 (c) The operator in charge is ultimately responsible for
21 compliance with the laws of this state related to crematories. The
22 operator in charge may be charged with a violation of this chapter
23 if a violation occurs in the crematory.

24 SECTION 12. Section 651.459, Occupations Code, is amended
25 by adding Subsection (d) to read as follows:

26 (d) In this section, "unprofessional conduct" means conduct
27 prohibited under rules adopted by the state licensing agency for

1 the respective profession.

2 SECTION 13. Section 651.651, Occupations Code, is amended
3 by adding Subdivision (2-a) to read as follows:

4 (2-a) "Crematory operator" is the person in charge of
5 the crematory establishment.

6 SECTION 14. Subchapter N, Chapter 651, Occupations Code, is
7 amended by adding Section 651.655 to read as follows:

8 Sec. 651.655. CREMATORY OPERATOR'S LICENSE REQUIRED. (a) A
9 person may not own or operate a crematory establishment in this
10 state unless the person holds a crematory operator's license issued
11 by the commission.

12 (b) The commission by rule shall establish the
13 qualifications necessary for an operator's license, the
14 application procedure, the renewal procedure, the amount of the
15 license fee, and the continuing education requirements for a
16 crematory operator's license.

17 SECTION 15. Sections 694.001, 694.002, and 694.003, Health
18 and Safety Code, are amended to read as follows:

19 Sec. 694.001. DUTIES OF TEXAS FUNERAL SERVICE COMMISSION
20 [~~TEXAS DEPARTMENT OF HEALTH~~]. The Texas Funeral Service Commission
21 [~~Department of Health~~] shall regulate the disposal,
22 transportation, interment, and disinterment of dead bodies to the
23 extent reasonable and necessary to protect public health and
24 safety.

25 Sec. 694.002. DUTY OF TEXAS FUNERAL SERVICE COMMISSION
26 [~~COMMISSIONERS COURT~~] CONCERNING DISPOSITION OF BODY OF DECEASED
27 PAUPERS. (a) The Texas Funeral Service Commission [~~commissioners~~

1 ~~court of each county~~] shall provide for the disposition of the body
2 of a deceased pauper. The Texas Funeral Service Commission
3 ~~[commissioners court]~~ may adopt rules to implement this section.

4 (b) The Texas Funeral Service Commission ~~[commissioners~~
5 ~~court]~~ shall consider any information, including the religious
6 affiliation of the deceased pauper, provided by a person listed in
7 Section 711.002(a).

8 Sec. 694.003. POWER OF TEXAS FUNERAL SERVICE COMMISSION
9 ~~[GOVERNING BODY OF TYPE A GENERAL-LAW MUNICIPALITY]~~ CONCERNING
10 BURIAL. The Texas Funeral Service Commission ~~[governing body of a~~
11 ~~Type A general-law municipality]~~ may regulate the burial of the
12 dead.

13 SECTION 16. Section 711.002(a), Health and Safety Code, is
14 amended to read as follows:

15 (a) Unless a decedent has left directions in writing for the
16 disposition of the decedent's remains as provided in Subsection
17 (g), the following persons, in the priority listed, have the right
18 to control the disposition, including cremation, of the decedent's
19 remains, shall inter the remains, and are liable for the reasonable
20 cost of interment:

21 (1) the person designated in a written instrument
22 signed by the decedent;

23 (2) the decedent's surviving or common law spouse;

24 (3) any one of the decedent's surviving adult
25 children;

26 (4) either one of the decedent's surviving parents;

27 (5) any one of the decedent's surviving adult

1 siblings; or

2 (6) any adult person in the next degree of kinship in
3 the order named by law to inherit the estate of the decedent.

4 SECTION 17. Section 716.251(b), Health and Safety Code, is
5 amended to read as follows:

6 (b) A record must be kept on file at least until the second
7 [~~fifth~~] anniversary of the cremation.

8 SECTION 18. The following sections of the Health and Safety
9 Code are repealed:

10 (1) Section 651.259(g);

11 (2) Sections 651.304(b) and (c);

12 (3) Section 651.5026; and

13 (4) Section 651.559.

14 SECTION 19. Not later than March 1, 2010, the Texas Funeral
15 Service Commission shall adopt the rules necessary to implement the
16 changes in law made by this Act.

17 SECTION 20. (a) Except as provided by Subsection (b) of this
18 section, this Act takes effect September 1, 2009.

19 (b) Sections 651.4031, 651.4032, and 651.655, Occupations
20 Code, as added by this Act, take effect March 1, 2010.