

By: Gutierrez

H.B. No. 1708

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of funeral directing and embalming.

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

SECTION 1. Sections 651.303(b) and (c), Occupations Code, are amended to read as follows:

(b) The commission by rule shall define the terms of employment of a provisional license holder. The terms of employment[+]

[~~(1)~~] must include service by the provisional license holder[+]

[~~(A) of at least 17 hours a week or 73 hours a month, and~~

[~~(B)~~] under actual working conditions and under the personal supervision of a funeral director or embalmer[+, and

[~~(2) may not require more than 17 hours a week or 73 hours a month~~].

(c) The term of the provisional license program must be at least 12 consecutive months but not more than 24 consecutive months.

SECTION 2. Sections 651.401(a) and (d), Occupations Code, are amended to read as follows:

(a) A funeral director [~~or embalmer~~] must direct and personally supervise the pickup of a dead human body on first call.

(d) A funeral director [~~or embalmer~~] who directs the removal

1 or transfer of a dead human body without personally supervising the  
2 transfer is strictly accountable for compliance with the  
3 requirements of first call as provided by this section.

4 SECTION 3. Section 651.459, Occupations Code, is amended by  
5 amending Subsections (a) and (c) and adding Subsection (d) to read  
6 as follows:

7 (a) A person violates this chapter if the person:

8 (1) wilfully makes a false statement on:

9 (A) a death certificate, including forgery of a  
10 physician's signature; or

11 (B) a document required by this chapter or a rule  
12 adopted under this chapter;

13 (2) engages in fraudulent, unprofessional, or  
14 deceptive conduct in providing funeral services or merchandise to a  
15 customer;

16 (3) engages in dishonest and ~~[conduct]~~ wilful  
17 conduct~~[, or negligence]~~ in the practice of embalming or funeral  
18 directing that is likely to or does deceive or~~[,]~~ defraud~~[, or~~  
19 ~~otherwise injure]~~ the public;

20 (4) causes the execution of a document by the use of  
21 fraud, deceit, or misrepresentation;

22 (5) directly or indirectly employs a person to solicit  
23 individuals or institutions by whose influence dead human bodies  
24 may be turned over to a particular funeral director, embalmer, or  
25 funeral establishment;

26 (6) misappropriates funds held by a license holder, a  
27 funeral establishment, an employee or agent of the funeral

1 establishment, or another depository, that create an obligation to  
2 provide a funeral service or merchandise, including retaining for  
3 an unreasonable time excess funds paid by or on behalf of the  
4 customer for which the customer is entitled to a refund; or

5 (7) performs acts of funeral directing or embalming  
6 that are outside the licensed scope and authority of the license  
7 holder, or performs acts of funeral directing or embalming in a  
8 capacity other than that of an employee, agent, subcontractor, or  
9 assignee of a licensed funeral establishment that has contracted to  
10 perform those acts.

11 (c) A funeral director in charge violates this chapter if  
12 the funeral director in charge fails to provide a funeral director  
13 [~~or an embalmer~~] for direction or personal supervision for a first  
14 call.

15 (d) For purposes of this section, a person engages in  
16 unprofessional conduct if:

17 (1) the person knowingly commits an act in connection  
18 with providing funeral services or merchandise to a customer that  
19 violates federal or state law; and

20 (2) the act is committed with the intent to deceive or  
21 defraud the public.

22 SECTION 4. Subchapter K, Chapter 651, Occupations Code, is  
23 amended by adding Section 651.5011 to read as follows:

24 Sec. 651.5011. CHARGING FUNERAL DIRECTOR IN CHARGE WITH  
25 VIOLATION. In determining whether to charge a funeral director in  
26 charge with a violation, the commission shall consider:

27 (1) the nature and seriousness of the violation;

1           (2) the extent to which the employee or agent of the  
2 funeral establishment whose conduct is the basis of the violation  
3 was under the direct supervision of the funeral director in charge  
4 or another person at the time the employee or agent engaged in the  
5 conduct;

6           (3) the extent to which a licensed employee of the  
7 funeral establishment was directly responsible for the conduct that  
8 is the basis of the violation; and

9           (4) the causal connection between the supervision of  
10 the employee or agent of the funeral establishment by the funeral  
11 director in charge and the conduct engaged in by the employee or  
12 agent that is the basis of the violation.

13           SECTION 5. This Act takes effect immediately if it receives  
14 a vote of two-thirds of all the members elected to each house, as  
15 provided by Section 39, Article III, Texas Constitution. If this  
16 Act does not receive the vote necessary for immediate effect, this  
17 Act takes effect September 1, 2011.