86R4526 BEF-F

By:  Raymond H.B. No. 1290

A BILL TO BE ENTITLED

AN ACT

relating to the Texas Funeral Service Commission.

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

SECTION 1.  Section 651.055(c), Occupations Code, is amended to read as follows:

(c)  It is a ground for removal from the commission that a member:

(1)  does not have at the time of appointment the qualifications required by Sections 651.051(a) and (c) and 651.052(a);

(2)  does not maintain during service on the commission the qualifications required by Sections 651.051(a) and (c) and 651.052(a);

(3)  violates a prohibition established by Section 651.053 [~~Sections 651.053(a)-(e) or 651.506(h)~~];

(4)  cannot because of illness or disability discharge the member's duties for a substantial part of the term for which the member is appointed; or

(5)  is absent for more than half of the regularly scheduled commission meetings that the member is eligible to attend during a calendar year unless the absence is excused by majority vote of the commission.

SECTION 2.  The heading to Section 651.101, Occupations Code, is amended to read as follows:

Sec. 651.101.  EXECUTIVE DIRECTOR[~~; BOND~~].

SECTION 3.  The heading to Section 651.151, Occupations Code, is amended to read as follows:

Sec. 651.151.  GENERAL LICENSING POWERS AND DUTIES.

SECTION 4.  Section 651.151(c), Occupations Code, is redesignated as Section 651.1511, Occupations Code, and amended to read as follows:

Sec. 651.1511.  COMMITTEES. [~~(c)~~] The commission may appoint a committee from its members to consider and make a recommendation on a matter referred to the committee by the commission.

SECTION 5.  Section 651.004, Occupations Code, is transferred to Subchapter D, Chapter 651, Occupations Code, and redesignated as Section 651.168, Occupations Code, to read as follows:

Sec. 651.168 [~~651.004~~].  REGULATION OF CEMETERY AND CREMATORY SERVICES. (a) The commission shall regulate cemetery and crematory services as provided by this chapter and Chapter 716, Health and Safety Code.

(b)  The commission may not regulate cemetery or crematory services that occur after burial or inurnment unless the services relate to the care and treatment of the remains in an urn, casket, or outer enclosure.

SECTION 6.  Section 651.203, Occupations Code, is amended to read as follows:

Sec. 651.203.  RECORD OF COMPLAINTS. (a) The commission shall maintain a record [~~file~~] on each written complaint filed with the commission. The record [~~file~~] must include:

(1)  the subject matter of the complaint;

(2)  the date the complaint is received by the commission;

(3)  the name of the person who filed the complaint;

(4)  the name of each person contacted in relation to the complaint;

(5)  a summary of the results of the review or investigation of the complaint; and

(6)  an explanation of the reason the complaint [~~file~~] was closed, if the commission closed the complaint [~~file~~] without taking action other than to investigate the complaint.

(b)  Information in a record [~~file~~] maintained under this section, other than information relating to a complaint that has not reached a final disposition, is public information.

SECTION 7.  Section 651.252, Occupations Code, is amended to read as follows:

Sec. 651.252.  LICENSE APPLICATION. (a) The commission may adopt license application requirements [~~An applicant~~] for a funeral director's license or an embalmer's license [~~must submit a written license application to the commission and pay the application fee~~].

(b)  The commission may provide that a person applies for a funeral director's license or an embalmer's license by completing a provisional license program under Subchapter G [~~require an applicant to appear before at least one member of the commission for approval of the person's application. The approval is subject to review by the entire commission.~~

[~~(c)  The commission shall keep a permanent, alphabetical record of each license application and the action taken on the application. The record must indicate the current status of each application and license issued~~].

SECTION 8.  Section 651.164, Occupations Code, is transferred to Subchapter F, Chapter 651, Occupations Code, redesignated as Section 651.2525, Occupations Code, and amended to read as follows:

Sec. 651.2525 [~~651.164~~]. LICENSE EXPIRATION. (a) A funeral director's license or an embalmer's license is valid for 24 months.

(b)  The commission by rule shall [~~may~~] adopt a system under which licenses expire on various dates during the year. For an initial license that is issued for a term of less than 24 months [~~the year in which the license expiration date is changed~~], the commission shall prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

SECTION 9.  Section 651.253, Occupations Code, is amended to read as follows:

Sec. 651.253.  GENERAL LICENSE REQUIREMENTS. (a) To be eligible for a funeral director's license or an embalmer's license, an applicant must:

(1)  be at least 18 years of age;

(2)  have graduated from an accredited high school or passed an examination prescribed by the Texas Education Agency;

(3)  have graduated from an accredited school or college of mortuary science;

(4)  unless the applicant holds a reciprocal license, have completed the requirements of the provisional license program; and

(5)  have successfully completed the [~~applicable~~] written examinations [~~examination~~] described by Section 651.254 and by Section 651.255 or 651.256, as applicable.

(b)  Unless the applicant is seeking a reciprocal license, an [~~An~~] applicant for a funeral director's license or an embalmer's license may not be considered for that license until the applicant[~~:~~

[~~(1)~~]  completes all of the requirements of the provisional license program[~~; and~~

[~~(2)  attains a grade of at least 75 percent on the written examination given by the commission~~].

(c)  Notwithstanding Subsection (a)(3), the commission may adopt rules to allow an applicant who graduated from a school or college of mortuary science that is no longer accredited to become licensed as a funeral director or embalmer.

SECTION 10.  Section 651.254, Occupations Code, is amended to read as follows:

Sec. 651.254.  MORTUARY LAW EXAMINATION. The commission shall administer or arrange for the administration of a written examination developed by the commission or developed for the commission under a contract on:

(1)  laws applicable to vital statistics pertaining to dead human bodies; and

(2)  local and state rules and laws relating to the preparation, transportation, care, and disposition of dead human bodies. [~~LICENSE EXAMINATIONS; RESULTS. (a) The examinations for a funeral director's license and an embalmer's license shall be held at least annually. The examinations shall be given at the time and place designated by the commission. The commission shall give notice of the examinations.~~

[~~(b)  Not later than the 30th day after the date a person takes a licensing examination under this chapter, the commission shall notify the person of the results of the examination.~~

[~~(c)  If the examination is graded or reviewed by a testing service:~~

[~~(1)  the commission shall notify the person of the results of the examination not later than the 14th day after the date the commission receives the results from the testing service; and~~

[~~(2)  if notice of the examination results will be delayed for longer than 90 days after the examination date, the commission shall notify the person of the reason for the delay before the 90th day.~~

[~~(d)  The commission may require a testing service to notify a person of the results of the person's examination.~~

[~~(e)  If requested in writing by a person who fails a licensing examination administered under this chapter, the commission shall furnish the person with an analysis of the person's performance on the examination.~~]

SECTION 11.  Sections 651.255, 651.256, 651.258, and 651.259, Occupations Code, are amended to read as follows:

Sec. 651.255.  EXAMINATION [~~EXAMINATIONS~~] REQUIRED FOR FUNERAL DIRECTOR'S LICENSE. The commission shall administer or arrange for the administration of[~~:~~

[~~(1)~~]  a written professionally prepared examination on:

(1) [~~(A)~~]  the art and technique of funeral directing;

(2) [~~(B)~~]  the signs of death;

(3) [~~(C)~~]  the manner by which death may be determined;

(4) [~~(D)~~]  sanitation and hygiene;

(5) [~~(E)~~]  mortuary management and mortuary law;

(6) [~~(F)~~]  business and professional ethics; and

(7) [~~(G)~~]  other subjects that may be taught in a recognized school or college of mortuary science[~~; and~~

[~~(2)  a written examination developed by the commission or developed for the commission by contract on:~~

[~~(A)  laws applicable to vital statistics pertaining to dead human bodies; and~~

[~~(B)  local and state rules and laws relating to the preparation, transportation, care, and disposition of dead human bodies~~].

Sec. 651.256.  EXAMINATION [~~EXAMINATIONS~~] REQUIRED FOR EMBALMER'S LICENSE. The commission shall administer or arrange for the administration of[~~:~~

[~~(1)~~]  a written professionally prepared examination on:

(1) [~~(A)~~]  the anatomy of the human body, including:

(A) [~~(i)~~]  the cavities of the human body; and

(B) [~~(ii)~~]  the arterial and venous system of the human body;

(2) [~~(B)~~]  blood and discoloration;

(3) [~~(C)~~]  bacteriology and hygiene;

(4) [~~(D)~~]  pathology;

(5) [~~(E)~~]  chemistry and embalming;

(6) [~~(F)~~]  arterial and cavity embalming;

(7) [~~(G)~~]  restorative art;

(8) [~~(H)~~]  disinfecting;

(9) [~~(I)~~]  embalming special cases;

(10) [~~(J)~~]  contagious and infectious diseases;

(11) [~~(K)~~]  mortuary management;

(12) [~~(L)~~]  care, preservation, transportation, and disposition of dead human bodies;

(13) [~~(M)~~]  sanitary science; and

(14) [~~(N)~~]  other subjects that may be taught in a recognized school or college of mortuary science[~~; and~~

[~~(2)  a written examination developed by the commission or developed for the commission by contract on:~~

[~~(A)  laws applicable to vital statistics pertaining to dead human bodies; and~~

[~~(B)  local and state rules and laws relating to the care and disposition of dead human bodies~~].

Sec. 651.258.  LICENSE ISSUANCE. A [~~On issuance of a funeral director's license or an embalmer's license under this chapter, a majority of the commission members shall sign the license. The~~] license issued by the commission under this subchapter authorizes the license holder to practice embalming, funeral directing, or both.

Sec. 651.259.  APPLICATION BY OUT-OF-STATE LICENSE HOLDER. (a) The commission shall waive any requirement for a funeral director's license or an embalmer's license for an applicant who holds a license issued by another state, country, or territory that has license requirements substantially equivalent to the requirements of this state and who meets the requirements of this section. The commission may waive any license requirement for an applicant who holds a license issued by another state that does not have license requirements substantially equivalent to those of this state and who meets the requirements of this section. [~~The applicant shall pay a license fee in an amount set by the commission.~~]

(b)  Any applicant for a license under this section shall file an [~~a sworn~~] application that includes:

(1)  a sworn statement that:

(A)  the applicant is the person to whom the license was issued;

(B)  the license under which the applicant practiced as a funeral director or embalmer in the state, country, or territory from which the applicant moved was, at the time the applicant left, in effect;

(C)  no proceeding has been instituted against the applicant for the cancellation, suspension, or revocation of the license in the state, country, or territory that issued the license; and

(D) [~~(C)~~]  no prosecution is pending against the applicant in a state or federal court for an offense that, under the laws of this state, is a felony, or is a misdemeanor related to the practice of embalming or funeral directing; [~~and~~]

(2)  an affidavit of a person described by Subsection (c) verifying that:

(A)  the accompanying license has not been canceled, suspended, or revoked; and

(B)  the statement of the qualifications made in the application for licensure in this state is correct; and

(3)  documentation that the applicant has graduated from an accredited college of mortuary science.

(c)  The affidavit must be made by:

(1)  the presiding officer or secretary of the governmental entity that issued the license; or

(2)  a registration officer of the state, country, or territory that issued the license.

(d)  [~~The applicant must affirm in the statement that the license under which the applicant practiced as a funeral director or embalmer in the state, country, or territory from which the applicant moved was, at the time the applicant left, in effect.~~

[~~(e)~~]  An applicant must submit to [~~The commission shall conduct~~] a criminal background check after submitting a license application [~~on each applicant~~]. An applicant is not eligible for a license under this section if the applicant has, in the 10 years preceding the date of the application, been finally convicted of [~~a misdemeanor involving moral turpitude or~~] a felony.

(e) [~~(f)~~]  An applicant for a license under this section must[~~:~~

[~~(1)~~]  provide proof that[~~:~~

[~~(A)  the license is in good standing;~~

[~~(B)~~]  the applicant has practiced under the license for at least:

(1) [~~(i)~~]  one year in the state, country, or territory that issued the license if that state, country, or territory has license requirements substantially equivalent to those of this state; or

(2) [~~(ii)~~]  five years in the state, country, or territory that issued the license if that state, country, or territory does not have license requirements substantially equivalent to those of this state.

(f)  An applicant under this section must successfully complete the written examination described by Section 651.254[~~; and~~

[~~(C)  the applicant has graduated from an accredited college of mortuary science; and~~

[~~(2)  pass a written examination of not more than 50 questions on applicable state laws and commission rules~~].

(g)  On approval of the application, the applicant shall pay a license fee in an amount set by the commission [~~The commission shall conduct the examination under Subsection (f)(2) at each regularly scheduled meeting of the commission~~].

SECTION 12.  The heading to Section 651.260, Occupations Code, is amended to read as follows:

Sec. 651.260.  REPLACEMENT [~~DUPLICATE~~] LICENSE.

SECTION 13.  Sections 651.260(a) and (c), Occupations Code, are amended to read as follows:

(a)  If a license issued under this chapter is lost or destroyed, the license holder may apply to the commission for a replacement [~~duplicate~~] license.

(c)  The commission shall issue a replacement [~~duplicate~~] license after receipt of the information and payment of the fee set by the commission for the replacement [~~duplicate~~] license.

SECTION 14.  Section 651.261, Occupations Code, is amended to read as follows:

Sec. 651.261.  POSTING OF LICENSE. (a) A license holder shall conspicuously display the holder's original license, duplicate original license, or replacement license in each place of business at which the license holder practices.

(b)  The commission shall issue a duplicate original license on application if the license holder needs a license to display in multiple locations.

SECTION 15.  Section 651.266, Occupations Code, is amended to read as follows:

Sec. 651.266.  CONTINUING EDUCATION. The commission by rule may require continuing education as a condition for license renewal except for a license holder described by Section 651.155 or an applicant for renewal described by Section 651.265(b) [~~651.265~~]. If the commission requires continuing education, the commission shall require completion of a minimum number of hours of ethics training as a required part of that education.

SECTION 16.  Section 651.165, Occupations Code, is transferred to Subchapter F, Chapter 651, Occupations Code, redesignated as Section 651.2661, Occupations Code, and amended to read as follows:

Sec. 651.2661 [~~651.165~~]. RENEWAL OR REINSTATEMENT OF LICENSE. (a) A person who is otherwise eligible to renew a license may renew an unexpired license by paying the required renewal fee to the commission before the expiration date of the license. A person whose license has expired may not engage in activities that require a license until the license has been renewed.

(b)  A person whose license has been expired for 90 days or less may renew the license by paying to the commission a renewal fee that is equal to 1-1/2 times the normally required renewal fee.

(c)  A person whose license has been expired for more than 90 days but less than one year may renew the license by paying to the commission a renewal fee that is equal to two times the normally required renewal fee.

(d)  A person whose license has been expired for one year or more may reinstate [~~renew~~] the license by:

(1)  retaking and passing the [~~applicable~~] examination under Section 651.254;

(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.

(e)  A person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application may obtain a new license without reexamination if both licenses are in good standing. The person must pay to the commission a fee that is equal to two times the normally required renewal fee for the license.

(f)  At least 30 days before the expiration of a person's license, the commission shall send written notice of the impending license expiration to the person at the person's last known address according to the records of the commission.

SECTION 17.  Section 651.1655, Occupations Code, is transferred to Subchapter F, Chapter 651, Occupations Code, redesignated as Section 651.2662, Occupations Code, and amended to read as follows:

Sec. 651.2662 [~~651.1655~~]. REINSTATEMENT OF SUSPENDED LICENSE. If authorized by the commission, a [~~A~~] person whose license has been suspended may reinstate [~~renew~~] the license by:

(1)  paying to the commission a renewal fee that is equal to two times the normally required renewal fee;

(2)  paying [~~in addition to~~] any penalty assessed by the commission;

(3)  completing any continuing education required under Section 651.266; and

(4)  passing the examination under Section 651.254.

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

(c)  A hearing to determine whether to reissue a license shall be held before the commission unless the commission requires the hearing to be held before an administrative law judge [~~a hearings officer~~].

(d)  A license that has been revoked may be reissued [~~reinstated~~] only after the applicant:

(1)  retakes and passes the [~~applicable~~] examination under Section 651.254;

(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; and

(4)  pays any penalty previously assessed by the commission.

SECTION 19.  The heading to Subchapter H, Chapter 651, Occupations Code, is amended to read as follows:

SUBCHAPTER H. LICENSE REQUIREMENTS: CEMETERY, FUNERAL, AND COMMERCIAL EMBALMING [~~EMBALMER~~] ESTABLISHMENTS

SECTION 20.  Section 651.351, Occupations Code, is amended by amending Subsections (d), (f), (g), and (h) and adding Subsection (h-1) 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)  except as provided by Subsection (i), 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 vehicles [~~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 caskets, one of which must be the least expensive casket offered, that are [~~and~~] displayed in a setting that allows for private selection; and

(8)  conspicuously display the funeral establishment's license [~~casket showroom~~].

(f)  Other than the two full-size caskets, the merchandise [~~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.

(g)  The commission may exempt a funeral establishment from the requirements of Subsection (d)(5) if[~~:~~

[~~(1)~~]  the majority owner or designated agent of record of a funeral establishment submits a written petition to the commission requesting an exemption and stating:

(1) [~~(A)~~]  the establishment's name and address;

(2) [~~(B)~~]  that the establishment is located within 50 miles of a facility owned by the establishment requesting the exemption and at which embalming services may be performed; and

(3) [~~(C)~~]  that no embalming services will be performed at the establishment[~~; and~~

[~~(2)  the commission determines that the criteria in Subdivision (1) have been met~~].

(h)  The executive director shall notify the petitioner of the commission's decision on an exemption request under Subsection (g).

(h-1)  An [~~The~~] exemption under Subsection (g) remains in effect until the conditions required for the exemption are no longer met[~~:~~

[~~(1)  the establishment is no longer located within 50 miles of a facility owned by the exempt establishment or at which embalming services may be performed; or~~

[~~(2)  an embalming service has been performed at the establishment~~].

SECTION 21.  The heading to Section 651.352, Occupations Code, is amended to read as follows:

Sec. 651.352.  COMMERCIAL EMBALMING [~~EMBALMERS~~] ESTABLISHMENT LICENSE REQUIREMENTS.

SECTION 22.  Sections 651.352(a), (b), (c), and (e), Occupations Code, are amended to read as follows:

(a)  In this section, "commercial embalming [~~embalmers~~] establishment" means a funeral [~~an~~] establishment that:

(1)  embalms for other licensed funeral establishments; and

(2)  does not sell services or merchandise directly or at retail to the public[~~; and~~

[~~(3)  meets the requirements for an embalmers license~~].

(b)  An establishment that functions solely as a commercial embalming [~~embalmers~~] establishment is required to hold a commercial embalming [~~embalmers~~] establishment license and [~~but~~] is [~~not~~] required to comply with the requirements for a funeral establishment license under Section 651.351 except for the requirements of Sections 651.351(d)(3)[~~, (d)(6),~~] and (7) [~~(f)~~].

(c)  A commercial embalming [~~embalmers~~] establishment may employ an embalmer only if the embalmer is licensed under this chapter.

(e)  A licensed commercial embalming [~~embalmers~~] establishment that meets the licensing requirements under Subchapter N may hold a crematory establishment license.

SECTION 23.  Section 651.401, Occupations Code, is amended to read as follows:

Sec. 651.401.  REMOVAL OF DEAD HUMAN BODY [~~FIRST CALL~~]. (a) A funeral director [~~or embalmer~~] must direct [~~and personally supervise~~] the pickup of a dead human body [~~on first call~~].

(b)  A dead human body may be transferred without a funeral director directing [~~personally making~~] the transfer at the direction of a justice of the peace or other law enforcement official[~~:~~

[~~(1)  from one funeral establishment to another;~~

[~~(2)  from a funeral establishment to and from a morgue in which an autopsy is performed;~~

[~~(3)  to and from an airport, crematory, or both; or~~

[~~(4)  in circumstances in which there is no reasonable probability that an unlicensed person will encounter a family member or other person with whom funeral arrangements are normally made by a funeral director or embalmer~~].

(c)  A funeral director may direct an unlicensed person, a provisional license holder, or an embalmer in the removal of a dead human body. A funeral director who directs the removal of a dead human body by an unlicensed person is strictly accountable for compliance with the requirements of this chapter. If an unlicensed person, a provisional license holder, or an embalmer inadvertently encounters a family member or other person with whom funeral arrangements are normally made, the [~~unlicensed~~] person shall restrict communication with the family member or other person to:

(1)  identifying the [~~unlicensed~~] person's employer; and

(2)  [~~arranging an appointment with the unlicensed person's employer for a family member or other person who indicates a desire to make funeral arrangements for the deceased; and~~

[~~(3)~~]  making any disclosure to the family member or other person that is required by federal or state law or regulation.

[~~(d)  A funeral director or embalmer who directs the removal or transfer of a dead human body without personally supervising the transfer is strictly accountable for compliance with the requirements of first call as provided by this section.~~]

SECTION 24.  Section 651.407(c), Occupations Code, is amended to read as follows:

(c)  The funeral establishment shall retain a copy of the written consent for at least two years and shall make the records of the funeral establishment reasonably available for inspection by:

(1)  the commission; and

(2)  the person who provided the consent, as provided by Section 711.002, Health and Safety Code [~~; and~~

[~~(3)  the next of kin of the deceased person~~].

SECTION 25.  The heading to Section 651.454, Occupations Code, is amended to read as follows:

Sec. 651.454.  [~~OTHER~~] UNETHICAL CONDUCT IN SOLICITING CUSTOMERS.

SECTION 26.  Section 651.454(a), Occupations Code, is amended to read as follows:

(a)  A person violates this chapter if the person, in arranging for funeral services or merchandise, fails to:

(1)  provide a prospective customer at the beginning of the arrangement process with a copy of the brochure required by Section 651.404;

(2)  provide to a prospective customer inquiring in person about any funeral service or merchandise a retail price list for the prospective customer to keep;

(3)  explain to a prospective customer that a purchase [~~contractual~~] agreement for funeral services or merchandise may not be entered into before a retail price list is provided to the prospective customer; or

(4)  provide general price information by telephone within a reasonable time.

SECTION 27.  Sections 651.457 and 651.458, Occupations Code, are amended to read as follows:

Sec. 651.457.  UNETHICAL CONDUCT REGARDING EMBALMING. (a) A person violates this chapter if the person:

(1)  embalms a body without:

(A)  receiving the express written or oral permission of a person authorized to make funeral arrangements for the deceased; or

(B)  making a documented reasonable effort over a period of at least three hours to obtain the permission;

(2)  [~~embalms or attempts to embalm a dead human body without proper authority, evidence of which includes making an incision on the body, raising a circulatory vessel of the body, or injecting a chemical into the body;~~

[~~(3)~~]  allows the presence or participation of a student for credit or satisfaction of academic requirements during the embalming of a dead human body without complying with Section 651.407; or

(3) [~~(4)~~]  places a chemical or substance on or in a dead human body to disinfect or preserve the body or to restore body tissues and structures without holding an embalmer's license.

(b)  Notwithstanding Subsection (a)(3) [~~(a)(4)~~], a provisional license holder does not violate this chapter if the provisional license holder places a chemical or substance on or in a dead human body to disinfect or preserve the body or to restore body tissues and structures under the supervision of an embalmer.

(c)  For purposes of this section, "embalms a body" includes an attempt to embalm a body, evidence of which includes making an incision on the body, raising a circulatory vessel of the body, or injecting a chemical into the body.

Sec. 651.458.  UNETHICAL CONDUCT BY FUNERAL ESTABLISHMENT. A person violates this chapter if the person makes a distinction in providing funeral information to a customer because [~~regardless~~] of any affiliation of the customer or because [~~whether~~] the customer does or does not have [~~has~~] a present need for the services or merchandise.

SECTION 28.  The heading to Section 651.459, Occupations Code, is amended to read as follows:

Sec. 651.459.  [~~OTHER~~] UNETHICAL CONDUCT IN PROVIDING FUNERAL SERVICES.

SECTION 29.  Sections 651.459(a) and (c), Occupations Code, are amended to read as follows:

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

(1)  wilfully makes a false statement on:

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

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

(2)  engages in dishonest [~~fraudulent~~], unprofessional, or negligent [~~deceptive~~] conduct in providing embalming services or funeral services or merchandise to a customer [~~;~~

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

(3) [~~(4)~~]  causes the execution of a document by the use of fraud, deceit, or misrepresentation;

(4) [~~(5)~~]  directly or indirectly employs a person to solicit individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral director, embalmer, or funeral establishment;

(5) [~~(6)~~]  misappropriates funds held by a license holder, a funeral establishment, an employee or agent of the funeral establishment, or another depository, that create an obligation to provide a funeral service or merchandise, including retaining for an unreasonable time excess funds paid by or on behalf of the customer for which the customer is entitled to a refund; or

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

(c)  A funeral director in charge violates this chapter if the funeral director in charge fails to ensure that a dead human body is removed in the manner provided by Section 651.401 [~~provide a funeral director or an embalmer for direction or personal supervision for a first call~~].

SECTION 30.  Section 651.461, Occupations Code, is amended 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 in writing 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 31.  Section 651.508, Occupations Code, is transferred to Subchapter J, Chapter 651, Occupations Code, redesignated as Section 651.462, Occupations Code, and amended to read as follows:

Sec. 651.462 [~~651.508~~].  ENFORCEMENT OF LAW REGULATING CREMATORIES. A [~~For purposes of this subchapter, a~~] person regulated under this chapter that violates Chapter 716, Health and Safety Code, violates this chapter.

SECTION 32.  Section 651.501(a), Occupations Code, is amended to read as follows:

(a)  After notice and the opportunity for a hearing [~~as provided by this subchapter~~], the commission may issue a letter of warning [~~reprimand~~], assess an administrative penalty, revoke or [~~,~~] suspend a license, place a license holder on probation [~~or probate the suspension of a license or provisional license~~], or impose any combination of those penalties if the commission determines that a person regulated under this chapter has violated [~~for a violation of~~] this chapter or a rule adopted under this chapter.

SECTION 33.  The heading to Section 651.502, Occupations Code, is amended to read as follows:

Sec. 651.502.  LICENSE DENIAL[~~; EFFECT OF CRIMINAL CONVICTION~~].

SECTION 34.  Section 651.502, Occupations Code, is amended by amending Subsections (a) and (b) and adding Subsection (a-1) to read as follows:

(a)  After a hearing before the commission, the [~~The~~] commission may[~~, before a hearing or a waiver of a right to a hearing,~~] refuse to issue or renew:

(1)  a license or provisional license to a person who has violated this chapter or a rule adopted under this chapter or who has a criminal conviction; or

(2)  an establishment license to an individual, partnership, or corporation if the individual, a partner, or an officer or director of the corporation:

(A)  has violated this chapter or a rule adopted under this chapter;

(B)  previously held an establishment license that was suspended or revoked; or

(C)  attempts to avoid a revocation, suspension, or license denial [~~refusal~~] by subterfuge or other evasive means.

(a-1)  The commission may, after a hearing held under Subsection (a), order that a license be issued or renewed on a probationary basis through the execution of an agreed order.

(b)  A person who is refused the issuance or renewal of [~~to whom the commission refuses to issue~~] a license under Subsection (a) may appeal the decision by submitting a written request for a hearing in accordance with Chapter 2001, Government Code, not later than the 30th day after the date of the refusal.

SECTION 35.  The heading to Section 651.503, Occupations Code, is amended to read as follows:

Sec. 651.503.  LETTER OF WARNING; REPORT BY LICENSE HOLDER.

SECTION 36.  Section 651.503(a), Occupations Code, is amended to read as follows:

(a)  The commission shall issue a written warning to a license holder if the commission:

(1)  conducts an investigation that identifies a violation of this chapter by the license holder; and

(2)  does not [~~issue a reprimand, assess an administrative penalty, or~~] impose any other penalty against the license holder.

SECTION 37.  Section 651.505, Occupations Code, is amended by amending Subsection (a) and adding Subsection (d) to read as follows:

(a)  If the commission places a license holder on probation [~~a person whose license has been suspended~~], the commission may impose conditions on the probation that are reasonable and related to the reason the license holder was placed on probation [~~violation for which the license was suspended~~]. If the commission orders probation, the commission may require the license holder to:

(1)  report regularly to the commission on matters that are the basis of the probation;

(2)  limit practice to the areas prescribed by the commission; or

(3)  continue or renew professional education until the license holder attains a degree of skill satisfactory to the commission in those areas that are the basis of the probation.

(d)  The commission may suspend or revoke the license of a license holder without a hearing if the commission determines the license holder violated the terms of probation. The license holder may appeal the decision by submitting a written request for a hearing in accordance with this chapter and Chapter 2001, Government Code, not later than the 30th day after the date of the suspension or revocation.

SECTION 38.  Section 651.506(a), Occupations Code, is amended to read as follows:

(a)  A proceeding conducted by the commission relating to an appeal of the denial of a license or provisional license, the suspension or revocation of a license, [~~the issuance of a reprimand,~~] or the imposition of an administrative penalty under Subchapter L [~~assessed after a hearing as provided by Section 651.551~~] and judicial review of the proceeding are governed by Chapter 2001, Government Code.

SECTION 39.  Section 651.506(f), Occupations Code, is redesignated as Section 651.50601, Occupations Code, and amended to read as follows:

Sec. 651.50601.  DECISION BY COMMISSION. [~~(f)~~] The commission shall review the findings of fact, conclusions of law, and ruling of the administrative law judge in a proceeding under Section 651.506 before making its final ruling in the proceeding. The commission may also review a transcript of the proceeding before making its final ruling. The commission shall adopt the ruling of the administrative law judge as its ruling unless it finds good cause to issue a different ruling. The commission shall explain in writing the reasons for adopting a ruling other than the one issued by the administrative law judge.

SECTION 40.  Subchapter K, Chapter 651, Occupations Code, is amended by adding Section 651.5065 to read as follows:

Sec. 651.5065.  INFORMAL PROCEEDINGS. (a) The commission by rule shall adopt procedures governing:

(1)  informal disposition of a contested case under Section 2001.056, Government Code; and

(2)  an informal proceeding held in compliance with Section 2001.054, Government Code.

(b)  A settlement reached through an informal proceeding is finalized through the execution of an agreed order. The agreed order must specify the violation found, any administrative penalty assessed, and the consequences of failing to comply with the terms of the agreed order.

(c)  If a settlement is not reached through an informal proceeding, the commission shall hold a hearing on the matter under Section 651.506.

SECTION 41.  Section 651.5515, Occupations Code, is transferred to Subchapter K, Chapter 651, Occupations Code, redesignated as Section 651.5075, Occupations Code, and amended to read as follows:

Sec. 651.5075 [~~651.5515~~].  SANCTIONS SCHEDULE [~~PENALTY GUIDELINES~~]. (a) The commission by rule shall adopt a sanctions schedule [~~guidelines that define and summarize the violations that occur under this subchapter to assist the commission in maintaining consistency in determining the amount of an administrative penalty assessed under Section 651.552. Using those guidelines and the summary, the commission shall establish and maintain a chart~~] that lists:

(1)  the most common violations that occur under this chapter;

(2)  the types of sanctions, including administrative penalties, that may be imposed [~~penalty amounts assessed~~] for those violations; and

(3)  the factors used to determine the sanction that may be imposed for [~~grade~~] each [~~type of~~] violation [~~before determining the penalty amount under Section 651.552~~].

(b)  The commission shall [~~consider using focus groups to~~] obtain business and consumer input to match appropriate sanctions [~~penalties~~] to violations before proposing the rules under this section.

(c)  The commission shall post the schedule [~~guidelines~~] on the commission's Internet website [~~site~~].

SECTION 42.  Section 651.551(b), Occupations Code, is amended to read as follows:

(b)  [~~The penalty may be assessed in the manner provided by this subchapter or after a hearing under Section 651.506.~~] If an administrative penalty is assessed after a hearing under Section 651.506, the commission shall follow the procedures described in Sections 651.555 through 651.558.

SECTION 43.  Section 651.552(b), Occupations Code, is amended to read as follows:

(b)  In determining the amount of the penalty, the commission shall base its decision on:

(1)  the seriousness of the violation;

(2)  the threat the violation poses to health and safety;

(3)  the history of previous violations;

(4)  the amount necessary to deter a future violation;

(5)  efforts made to correct the violation;

(6)  the sanctions schedule [~~guidelines~~] adopted under Section 651.5075 [~~651.5515~~]; and

(7)  any other matter that justice requires.

SECTION 44.  Sections 651.553(a) and (b), Occupations Code, are amended to read as follows:

(a)  If, after examining a possible violation and the facts relating to that violation, the commission determines that a violation has occurred, the commission shall issue a [~~preliminary~~] report stating:

(1)  the facts on which the determination is based;

(2)  that an administrative penalty is to be imposed; and

(3)  the amount of the penalty.

(b)  Not later than the 10th day after the date the report is issued, the commission shall send to the person charged with the violation:

(1)  a copy of the report;

(2)  a statement of the right of the person to a hearing relating to the alleged violation; and

(3)  a statement of the amount of the penalty [~~; and~~

[~~(4) an explanation for any significant deviation from the penalty amount assessed for similar violations~~].

SECTION 45.  Sections 651.554(a) and (d), Occupations Code, are amended to read as follows:

(a)  Not later than the 30th day after the date the [~~preliminary~~] report is sent, the person charged may:

(1)  make a written request for a hearing; or

(2)  pay the administrative penalty to the commission.

(d)  If the person requests a hearing, the hearing shall be conducted in the manner provided by Section 651.506 or through an informal proceeding described by Section 651.5065(a).

SECTION 46.  Section 651.602(a), Occupations Code, is amended to read as follows:

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

(1)  acts or holds the person out as a funeral director, embalmer, or provisional license holder without being licensed under this chapter;

(2)  [~~makes a first call in a manner that~~] violates Section 651.401;

(3)  is a funeral director, embalmer, or provisional license holder and engages in a funeral practice that violates this chapter or a rule adopted under this chapter; or

(4)  violates Chapter 154, Finance Code, or a rule adopted under that chapter, regardless of whether the Texas Department of Banking or another governmental agency takes action relating to the violation.

SECTION 47.  Section 651.652, Occupations Code, is amended to read as follows:

Sec. 651.652.  APPLICABILITY. [~~(a)~~] This subchapter applies only to a crematory that sells goods or services related to the [~~burial or~~] final disposition of a body.

SECTION 48.  The following sections of the Occupations Code are repealed:

(1)  Section 651.257;

(2)  Section 651.2595;

(3)  Section 651.264;

(4)  Section 651.354(d);

(5)  Section 651.355;

(6)  Sections 651.502(c) and (d);

(7)  Section 651.5026;

(8)  Section 651.504;

(9)  Sections 651.506(g) and (h);

(10)  Section 651.5061; and

(11)  Section 651.559.

SECTION 49.  Sections 651.253 and 651.259, Occupations Code, as amended by this Act, apply only to a person who applies for a funeral director's license or embalmer's license on or after the effective date of this Act. A person who applies for a funeral director's license or embalmer's license before the effective date of this Act is governed by the law in effect on the date the person applied for that license, and the former law is continued in effect for that purpose.

SECTION 50.  Section 651.2661, Occupations Code, as transferred, redesignated, and amended by this Act, applies only to a person who applies for reinstatement of a license on or after the effective date of this Act. A person who applies for renewal of a license under former Section 651.165, Occupations Code, before the effective date of this Act is governed by the law in effect on the date the person applied for renewal, and the former law is continued in effect for that purpose.

SECTION 51.  Section 651.2662, Occupations Code, as transferred, redesignated, and amended by this Act, applies only to a person who applies for reinstatement of a license on or after the effective date of this Act. A person who applies for renewal of a license under former Section 651.1655, Occupations Code, before the effective date of this Act is governed by the law in effect on the date the person applied for renewal, and the former law is continued in effect for that purpose.

SECTION 52.  Section 651.267, Occupations Code, as amended by this Act, applies only to a person who applies for reissuance of a license on or after the effective date of this Act. A person who applies for reissuance of a license before the effective date of this Act is governed by the law in effect on the date the person applied for reissuance, and the former law is continued in effect for that purpose.

SECTION 53.  Section 651.502, Occupations Code, as amended by this Act, applies only to a person who applies for the issuance or renewal of a license on or after the effective date of this Act. A person who applies for the issuance or renewal of a license before the effective date of this Act is governed by the law in effect on the date the person applied, and the former law is continued in effect for that purpose.

SECTION 54.  Section 651.505, Occupations Code, as amended by this Act, applies only to a person placed on probation on or after the effective date of this Act. A person placed on probation before the effective date of this Act is governed by the law in effect on the date the person was placed on probation, and the former law is continued in effect for that purpose.

SECTION 55.  Section 651.506, Occupations Code, as amended by this Act, and Section 651.50601, Occupations Code, as redesignated and amended by this Act, apply only to a proceeding initiated on or after the effective date of this Act. A proceeding initiated before the effective date of this Act is governed by the law in effect on the date the proceeding was initiated, and the former law is continued in effect for that purpose.

SECTION 56.  This Act takes effect September 1, 2019.