By:  Nichols, et al. S.B. No. 614

(In the Senate - Filed February 20, 2019; February 21, 2019, read first time and referred to Committee on Business & Commerce; March 25, 2019, reported adversely, with favorable Committee Substitute by the following vote: Yeas 9, Nays 0; March 25, 2019, sent to printer.)

COMMITTEE VOTE

                    Yea Nay Absent  PNV

Hancock              X

Nichols              X

Campbell             X

Creighton            X

Menéndez             X

Paxton               X

Schwertner           X

Whitmire             X

Zaffirini            X

COMMITTEE SUBSTITUTE FOR S.B. No. 614 By:  Nichols

A BILL TO BE ENTITLED

AN ACT

relating to the continuation and functions of the Finance Commission of Texas, the Texas Department of Banking, and the Department of Savings and Mortgage Lending, to the training requirements applicable to the agencies overseen by the Finance Commission of Texas, and to the regulation of certain financial institutions and businesses.

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

SECTION 1.  Section 11.108, Finance Code, is amended to read as follows:

Sec. 11.108.  SUNSET PROVISION. The finance commission is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the commission is abolished September 1, 2031 [~~2019~~].

SECTION 2.  Section 11.110, Finance Code, is amended by adding Subsections (d) and (e) to read as follows:

(d)  The commissioner of each finance agency shall create a training manual that includes the information required by Subsection (b) applicable to that commissioner's agency. The commissioner of each finance agency shall distribute a copy of the training manual created under this subsection annually to each member of the finance commission. Each member of the finance commission shall sign and submit to the appropriate commissioner a statement acknowledging that the member received and has reviewed the training manual.

(e)  Notwithstanding Subsection (d), the commissioner of each finance agency may collaborate and jointly create one training manual that includes the information required by Subsection (b) applicable to each finance agency.

SECTION 3.  Subchapter B, Chapter 11, Finance Code, is amended by adding Section 11.113 to read as follows:

Sec. 11.113.  ADVISORY COMMITTEES. (a)  The finance commission may appoint advisory committees to assist the finance commission in performing its duties.

(b)  The finance commission shall specify each committee's purpose, powers, and duties and shall require each committee to report to the finance commission in the manner specified by the finance commission concerning the committee's activities and the results of its work.

SECTION 4.  Section 11.202(b), Finance Code, is amended to read as follows:

(b)  The Texas Department of Banking may employ a hearings officer to serve the finance agencies as determined by interagency agreement. For the purposes of Section 2003.021, Government Code, a hearings officer employed under this section is considered to be an employee of each agency for which hearing services are provided. The hearings officer's only duty is to preside over matters related to contested cases before a finance agency [~~or the finance commission~~].

SECTION 5.  Section 12.108, Finance Code, is amended to read as follows:

Sec. 12.108.  CONSUMER INFORMATION AND COMPLAINTS. (a)  The department [~~banking commissioner~~] shall maintain a system to promptly and efficiently act on complaints filed with the department. The department shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition[~~:~~

[~~(1)  prepare information of consumer interest describing:~~

[~~(A)  the regulatory functions of the department; and~~

[~~(B)  the department's procedures by which consumer complaints are filed with and resolved by the department; and~~

[~~(2)  make the information available to the public and appropriate state agencies~~].

(b)  The department shall make information available describing its procedures for complaint investigation and resolution [~~maintain a file on each written complaint filed with the department. The file must include:~~

[~~(1)  the name of the person who filed the complaint;~~

[~~(2)  the date the complaint is received by the department;~~

[~~(3)  the subject matter of 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 file was closed~~].

(c)  The department shall periodically notify the complaint parties of the status of the complaint until final disposition [~~provide to the person filing the complaint and to each person who is a subject of the complaint a written summary of the department's policies and procedures relating to complaint investigation and resolution~~].

SECTION 6.  Section 12.109, Finance Code, is amended to read as follows:

Sec. 12.109.  SUNSET PROVISION. The office of banking commissioner is subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office is abolished September 1, 2031 [~~2019~~].

SECTION 7.  Subchapter B, Chapter 12, Finance Code, is amended by adding Sections 12.113 and 12.114 to read as follows:

Sec. 12.113.  ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION. (a)  The finance commission by rule shall develop a policy to encourage the use of:

(1)  negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of rules by the finance commission applicable to the department; and

(2)  appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the department's jurisdiction.

(b)  The procedures applicable to the department relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c)  The department shall:

(1)  coordinate the implementation of the policy adopted under Subsection (a);

(2)  provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3)  collect data concerning the effectiveness of those procedures.

Sec. 12.114.  ADVISORY COMMITTEES. (a)  The banking commissioner may appoint advisory committees to assist the department and banking commissioner in performing their duties.

(b)  The banking commissioner shall specify each committee's purpose, powers, and duties and shall require each committee to report to the banking commissioner or department in the manner specified by the banking commissioner concerning the committee's activities and the results of its work.

SECTION 8.  Sections 13.011(a), (b), and (c), Finance Code, are amended to read as follows:

(a)  The Department of Savings and Mortgage Lending [~~savings and mortgage lending commissioner~~] shall maintain a system to promptly and efficiently act on complaints filed with that department. The Department of Savings and Mortgage Lending shall maintain information about parties to the complaint, the subject matter of the complaint, a summary of the results of the review or investigation of the complaint, and its disposition [~~prepare information of consumer interest describing:~~

[~~(1)  the regulatory functions of the Department of Savings and Mortgage Lending; and~~

[~~(2)  the procedures by which consumer complaints are filed with and resolved by the Department of Savings and Mortgage Lending~~].

(b)  The Department of Savings and Mortgage Lending shall make information [~~under Subsection (a) must be made~~] available describing its procedures for complaint investigation and resolution [~~to the public and appropriate state agencies~~].

(c)  The Department of Savings and Mortgage Lending shall periodically notify the complaint parties of the status of the complaint until final disposition [~~maintain a file on each written complaint filed with the Department of Savings and Mortgage Lending. The file must include:~~

[~~(1)  the name of the person who filed the complaint;~~

[~~(2)  the date the complaint is received by the Department of Savings and Mortgage Lending;~~

[~~(3)  the subject matter of 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 file was closed, if the agency closed the file without taking action other than to investigate the complaint~~].

SECTION 9.  Section 13.012, Finance Code, is amended to read as follows:

Sec. 13.012.  SUNSET PROVISION. The office of savings and mortgage lending commissioner and the Department of Savings and Mortgage Lending are subject to Chapter 325, Government Code (Texas Sunset Act). Unless continued in existence as provided by that chapter, the office and department are abolished September 1, 2031 [~~2019~~].

SECTION 10.  Chapter 13, Finance Code, is amended by adding Sections 13.017 and 13.018 to read as follows:

Sec. 13.017.  ALTERNATIVE RULEMAKING AND DISPUTE RESOLUTION. (a)  The finance commission by rule shall develop a policy to encourage the use of:

(1)  negotiated rulemaking procedures under Chapter 2008, Government Code, for the adoption of rules by the finance commission applicable to the Department of Savings and Mortgage Lending; and

(2)  appropriate alternative dispute resolution procedures under Chapter 2009, Government Code, to assist in the resolution of internal and external disputes under the Department of Savings and Mortgage Lending's jurisdiction.

(b)  The procedures applicable to the Department of Savings and Mortgage Lending relating to alternative dispute resolution must conform, to the extent possible, to any model guidelines issued by the State Office of Administrative Hearings for the use of alternative dispute resolution by state agencies.

(c)  The Department of Savings and Mortgage Lending shall:

(1)  coordinate the implementation of the policy adopted under Subsection (a);

(2)  provide training as needed to implement the procedures for negotiated rulemaking or alternative dispute resolution; and

(3)  collect data concerning the effectiveness of those procedures.

Sec. 13.018.  ADVISORY COMMITTEES. (a)  The savings and mortgage lending commissioner may appoint advisory committees to assist the Department of Savings and Mortgage Lending and savings and mortgage lending commissioner in performing their duties.

(b)  The savings and mortgage lending commissioner shall specify each committee's purpose, powers, and duties and shall require each committee to report to the savings and mortgage lending commissioner or Department of Savings and Mortgage Lending in the manner specified by the savings and mortgage lending commissioner concerning the committee's activities and the results of its work.

SECTION 11.  Sections 31.202 and 31.204, Finance Code, are amended to read as follows:

Sec. 31.202.  APPEAL OF BANKING COMMISSIONER DECISION OR ORDER. Except as expressly provided otherwise by this subtitle, an appellant may appeal a decision or order of the banking commissioner made under this subtitle or Chapter 12 after a hearing [~~directly~~] to a district court in [~~the District Court of~~] Travis County as provided by Section 31.204 [~~or, at the option of the appellant, to the finance commission for review~~].

Sec. 31.204.  [~~DIRECT~~] APPEAL TO DISTRICT COURT [~~OR APPEAL OF FINANCE COMMISSION ORDER~~]. A person affected by a final order of the banking commissioner [~~who elects to appeal directly to district court, or a person affected by a final order of the finance commission under this chapter,~~] may appeal the final order by filing a petition for judicial review in a district court in [~~the District Court of~~] Travis County as provided by Chapter 2001, Government Code. A petition for judicial review filed in the district court does not stay or vacate the appealed order unless the court, after notice and hearing, expressly stays or vacates the order.

SECTION 12.  Section 32.009(d), Finance Code, is amended to read as follows:

(d)  A state bank that is denied the requested right or privilege to engage in an activity by the banking commissioner under this section may appeal as provided by Sections 31.202[~~, 31.203,~~] and 31.204 or may resubmit a letter under this subsection with additional information or authority relevant to the banking commissioner's determination. A denial is immediately final for purposes of appeal.

SECTION 13.  Section 32.010(d), Finance Code, is amended to read as follows:

(d)  A state bank that is denied the requested power by the banking commissioner under this section may appeal as provided by Sections 31.202[~~, 31.203,~~] and 31.204 or may resubmit a letter under this section with additional information or authority relevant to the banking commissioner's determination. A denial is immediately final for purposes of appeal.

SECTION 14.  Section 35.0035(g), Finance Code, is amended to read as follows:

(g)  After the hearing, the banking commissioner may affirm, modify, or set aside, in whole or in part, the order. An order affirming or modifying the order is immediately final for purposes of enforcement and appeal. The order may be appealed as provided by Sections 31.202[~~, 31.203,~~] and 31.204.

SECTION 15.  Section 35.004(c), Finance Code, is amended to read as follows:

(c)  An order issued under this section is immediately final for purposes of enforcement and appeal. The order may be appealed as provided by Sections 31.202[~~, 31.203,~~] and 31.204.

SECTION 16.  Section 35.005(e), Finance Code, is amended to read as follows:

(e)  After the hearing, the banking commissioner may affirm, modify, or set aside in whole or part the emergency order. An order affirming or modifying the emergency order is immediately final for purposes of enforcement and appeal. The order may be appealed as provided by Sections 31.202[~~, 31.203,~~] and 31.204.

SECTION 17.  Section 35.104(c), Finance Code, is amended to read as follows:

(c)  An order issued under Subsection (b) is immediately final for purposes of appeal. The order may be appealed as provided by Sections 31.202[~~, 31.203,~~] and 31.204.

SECTION 18.  Section 35.110(d), Finance Code, is amended to read as follows:

(d)  After the hearing, the banking commissioner may affirm, modify, or set aside in whole or part the prior ruling. An order supporting the action contested by the board is immediately final for purposes of appeal. The order may be appealed as provided by Sections 31.202[~~, 31.203,~~] and 31.204. [~~If the order is appealed to the finance commission, the finance commission may:~~

[~~(1)  affirm, terminate, or modify the order;~~

[~~(2)  continue or end supervision or conservatorship; and~~

[~~(3)  order further relief as justice, equity, and protection of depositors, creditors, and the public require.~~]

SECTION 19.  Sections 154.104(a) and (b), Finance Code, are amended to read as follows:

(a)  The commission by rule shall prescribe the term of a [~~A~~] permit [~~is~~] issued under this subchapter [~~for a one-year term~~].

(b)  If the commission prescribes the term of a permit issued under this subchapter for a period other than one year, the [~~The~~] commission shall prorate the fee required under this subchapter as necessary to reflect the term of the permit [~~by rule may adopt a system under which permits expire on various dates during the year~~].

SECTION 20.  Section 154.415(f), Finance Code, is amended to read as follows:

(f)  An order issued under Subsection (e) is immediately final for purposes of enforcement and appeal. The order may be appealed as provided by Sections 31.202[~~, 31.203,~~] and 31.204.

SECTION 21.  Section 157.012(c), Finance Code, is amended to read as follows:

(c)  To be eligible to be licensed as a residential mortgage loan originator, the individual, in addition to meeting the requirements of Subsection (a), must:

(1)  satisfy the commissioner as to [~~the individual's good moral character, including~~] the individual's honesty, trustworthiness, and integrity;

(2)  not be in violation of this chapter, Chapter 180, or any rules adopted under this chapter or Chapter 180;

(3)  provide the commissioner with satisfactory evidence that the individual meets the qualifications provided by Chapter 180; and

(4)  be a citizen of the United States or a lawfully admitted alien.

SECTION 22.  Sections 181.202 and 181.204, Finance Code, are amended to read as follows:

Sec. 181.202.  APPEAL OF BANKING COMMISSIONER DECISION OR ORDER. Except as expressly provided otherwise by this subtitle, a person affected by a decision or order of the banking commissioner made under this subtitle after a hearing may appeal the decision or order[~~:~~

[~~(1)  to the finance commission; or~~

[~~(2)  directly~~] to a district court in Travis County as provided by Section 181.204.

Sec. 181.204.  [~~DIRECT~~] APPEAL TO DISTRICT COURT [~~OR APPEAL OF FINANCE COMMISSION ORDER~~]. A person affected by a final order of the banking commissioner [~~who elects to appeal directly to district court, or a person affected by a final order of the finance commission under this subchapter,~~] may appeal the final order by filing a petition for judicial review as provided by Chapter 2001, Government Code. A petition for judicial review filed in the district court does not stay or vacate the appealed order unless the court, after notice and hearing, expressly stays or vacates the order.

SECTION 23.  Section 182.010(d), Finance Code, is amended to read as follows:

(d)  A state trust company that is denied the requested right or privilege to engage in an activity by the banking commissioner under this section may appeal as provided by Sections 181.202 and 181.204 [~~Sections 181.202-181.204~~] or may resubmit a letter under this section with additional information or authority relevant to the banking commissioner's determination. A denial is immediately final for purposes of appeal.

SECTION 24.  Section 185.0035(g), Finance Code, is amended to read as follows:

(g)  After the hearing, the banking commissioner may affirm, modify, or set aside, in whole or in part, the order. An order affirming or modifying the order is immediately final for purposes of enforcement and appeal. The order may be appealed as provided by Sections 181.202[~~, 181.203,~~] and 181.204.

SECTION 25.  Section 185.004(c), Finance Code, is amended to read as follows:

(c)  An order issued under this section is immediately final for purposes of enforcement and appeal. The order may be appealed as provided by Sections 181.202 and 181.204 [~~Sections 181.202-181.204~~].

SECTION 26.  Section 185.005(e), Finance Code, is amended to read as follows:

(e)  After the hearing, the banking commissioner may affirm, modify, or set aside in whole or part the emergency order. An order affirming or modifying the order is immediately final for purposes of enforcement and appeal. The order may be appealed as provided by Sections 181.202 and 181.204 [~~Sections 181.202-181.204~~].

SECTION 27.  Section 185.104(c), Finance Code, is amended to read as follows:

(c)  An order issued under Subsection (b) is immediately final for purposes of appeal. The order may be appealed as provided by Sections 181.202 and 181.204 [~~Sections 181.202-181.204~~].

SECTION 28.  Section 185.110(d), Finance Code, is amended to read as follows:

(d)  After the hearing, the banking commissioner may affirm, modify, or set aside in whole or part the prior ruling. An order supporting the action contested by the board is immediately final for purposes of appeal. The order may be appealed as provided by Sections 181.202 and 181.204 [~~Sections 181.202-181.204~~]. [~~If the order is appealed to the finance commission, the finance commission may:~~

[~~(1)  affirm, terminate, or modify the order;~~

[~~(2)  continue or end supervision or conservatorship; and~~

[~~(3)  order further relief as justice, equity, and protection of clients, creditors, and the public require.~~]

SECTION 29.  Section 187.305(a), Finance Code, is amended to read as follows:

(a)  If the banking commissioner determines that an out-of-state trust company has violated this subtitle or other applicable law of this state, the banking commissioner may take all enforcement actions the banking commissioner would be empowered to take if the out-of-state trust company were a state trust company, except that the banking commissioner shall promptly give notice to the home state regulator of each enforcement action to be taken against an out-of-state trust company and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving the enforcement action. An out-of-state trust company may appeal a final order or other decision of the banking commissioner under this subtitle as provided by Sections 181.202 and 181.204 [~~Sections 181.202-181.204~~].

SECTION 30.  Section 201.009, Finance Code, is amended to read as follows:

Sec. 201.009.  ENFORCEMENT; APPEALS. (a)  If the commissioner determines that a bank holding company or a foreign bank has violated this subtitle or other applicable law of this state, the commissioner may take any enforcement action the commissioner would be empowered to take if the bank holding company or foreign bank were a Texas state bank, except that the commissioner shall promptly give notice to the home state regulator of each enforcement action taken against an out-of-state bank holding company or foreign bank and, to the extent practicable, shall consult and cooperate with the home state regulator in pursuing and resolving the enforcement action. A bank holding company or foreign bank may appeal a final order or other decision of the commissioner under this subtitle as provided by Sections 31.202[~~, 31.203,~~] and 31.204.

(b)  If the commissioner determines that an interstate branch maintained by an out-of-state state bank in this state is being operated in violation of a law of this state that is applicable to the branch under Section 24(j), Federal Deposit Insurance Act (12 U.S.C. Section 1831a(j)), including a law that governs community reinvestment, fair lending, or consumer protection, the commissioner, with written notice to the home state regulator and subject to the terms of any applicable cooperative agreement with the home state regulator, may take any enforcement action the commissioner would be empowered to take if the branch were a Texas state bank or state savings bank, as the case may be. An out-of-state state bank may appeal a final order or other decision of the commissioner under this subtitle as provided by Sections 31.202[~~, 31.203,~~] and 31.204, or as provided under Subtitle C with respect to a state savings bank.

SECTION 31.  Section 204.119, Finance Code, is amended to read as follows:

Sec. 204.119.  STATUS OF REVOKED LICENSE. Unless stayed by the [~~finance commission or~~] district court that has jurisdiction over an appeal, a final order of the commissioner revoking a license is effective immediately and the foreign bank shall immediately cease all activity in this state requiring a license. Subject to Section 204.120, all functions requiring a license must be immediately transferred to a branch, affiliate, or agency of the foreign bank that is located outside of this state and that has the power to perform those functions under governing law. Continued activity in this state of an unlicensed foreign bank is subject to Subchapter C, Chapter 35.

SECTION 32.  Section 396.001(7), Finance Code, is amended to read as follows:

(7)  "Private child support enforcement agency" means an individual or nongovernmental entity who engages in the enforcement of child support ordered by a court or other tribunal for a fee or other consideration. The term includes a foreign agency. The term does not include:

(A)  an attorney enforcing a child support obligation on behalf of, and in the name of, a client unless the attorney has an employee who is not an attorney and who on behalf of the attorney:

(i)  regularly solicits for child support enforcement; or

(ii)  regularly contacts child support obligees or obligors for the purpose of child support enforcement;

(B)  a state agency designated to serve as the state's Title IV-D agency in accordance with Part D, Title IV, Social Security Act (42 U.S.C. Section 651 et seq.), as amended; or

(C)  a contractor awarded a contract to engage in child support enforcement on behalf of a governmental agency, including a contractor awarded a contract[~~:~~

[~~(i)  under Chapter 236, Family Code; or~~

[~~(ii)~~]  by a political subdivision of this or another state that is authorized by law to enforce a child support obligation.

SECTION 33.  Sections 396.202(a) and (b), Finance Code, are amended to read as follows:

(a)  A private child support enforcement [~~registered~~] agency shall maintain records of all child support collections made on behalf of, and disbursed to, a client who is an obligee, including:

(1)  the name of any obligor who made child support payments collected by the agency;

(2)  the amount of support collected by the agency for each client, including:

(A)  the date on which the amount was collected; and

(B)  the date on which each amount due the client by the obligor was paid to the client;

(3)  a copy of the order establishing the child support obligation under which a collection was made by the agency; and

(4)  any other pertinent information relating to the child support obligation, including any case, cause, or docket number of the court having jurisdiction over the matter.

(b)  The records required under this section must be updated at least monthly and must be maintained by the private child support enforcement [~~registered~~] agency for a period of four years from the date of the last support payment collected by the agency on behalf of an obligee.

SECTION 34.  Section 396.203(a), Finance Code, is amended to read as follows:

(a)  A private child support enforcement [~~registered~~] agency [~~and foreign agency authorized to engage in business under this chapter~~] shall execute a written contract for the enforcement of child support for each client of the agency that is residing in this state.

SECTION 35.  Sections 396.251(a) and (b), Finance Code, are amended to read as follows:

(a)  In enforcing a child support obligation, a private child support enforcement [~~registered~~] agency may not use threats, coercion, or attempts to coerce that employ any of the following practices:

(1)  using or threatening to use violence or other criminal means to cause harm to an obligor or property of the obligor;

(2)  accusing falsely or threatening to accuse falsely an obligor of a violation of state or federal child support laws;

(3)  taking or threatening to take an enforcement action against an obligor that is not authorized by law; or

(4)  intentionally representing to a person that the agency is a governmental agency authorized to enforce a child support obligation.

(b)  Subsection (a) does not prevent a private child support enforcement [~~registered~~] agency from:

(1)  informing an obligor that the obligor may be subject to penalties prescribed by law for failure to pay a child support obligation; or

(2)  taking, or threatening to take, an action authorized by law for the enforcement of a child support obligation by the agency.

SECTION 36.  Section 396.252, Finance Code, is amended to read as follows:

Sec. 396.252.  FRAUDULENT, DECEPTIVE, OR MISLEADING REPRESENTATIONS. In enforcing a child support obligation, a private child support enforcement [~~registered~~] agency or employee of the agency may not:

(1)  identify the [~~registered~~] agency by any name other than one by which the agency is authorized to do business under the laws of this state [~~registered with the department~~];

(2)  falsely represent the nature of the child support enforcement activities in which the agency is authorized by law to engage; or

(3)  falsely represent that an oral or written communication is the communication of an attorney.

SECTION 37.  Section 396.352(a), Finance Code, is amended to read as follows:

(a)  A private child support enforcement [~~registered~~] agency that is located in another state or [~~a private child support enforcement agency~~] that engages in the business of child support enforcement in this state in violation of this chapter is considered to have submitted to the jurisdiction of the courts of this state with respect to an action brought under this chapter.

SECTION 38.  Section 711.001(6), Health and Safety Code, is amended to read as follows:

(6)  "Cemetery broker" means a person who sells the exclusive right of sepulture for another person. The term does not include a person who:

(A)  is an officer, agent, or employee of the cemetery organization in which the plot is located, acting at the direction or under the control of the cemetery organization [~~and who is exempt from registration under Subchapter C-1~~]; or

(B)  originally purchased the exclusive right of sepulture for personal use.

SECTION 39.  Section 711.012(a), Health and Safety Code, is amended to read as follows:

(a)  The Finance Commission of Texas may adopt rules to enforce and administer [~~Subchapter C-1 and~~] Sections 711.003, 711.004, 711.007, 711.008, 711.0105, 711.021-711.024, 711.032-711.036, 711.038, 711.0381, 711.040-711.042, 711.052, 711.061, 711.063, and 711.064 relating to perpetual care cemeteries.

SECTION 40.  Section 711.038(e), Health and Safety Code, is amended to read as follows:

(e)  A person [~~who is an officer, agent, or employee of the cemetery organization or its affiliate and who is exempt from registration under Subchapter C-1~~] is not required to be licensed or registered to sell a plot in a dedicated cemetery.

SECTION 41.  Section 711.052(a), Health and Safety Code, is amended to read as follows:

(a)  A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person:

(1)  engages in a business for cemetery purposes in this state other than through a corporation organized for that purpose, if a corporation is required by law;

(2)  fails or refuses to keep records of interment as required by Sections 711.003 and 711.004;

(3)  sells, offers to sell, or advertises for sale a plot or the exclusive right of sepulture in a plot for purposes of speculation or investment;

(4)  represents through advertising or printed material that a retail department will be established for the resale of the plots of plot purchasers, that specific improvements will be made in the cemetery, or that specific merchandise or services will be furnished to a plot owner, unless adequate funds or reserves are created by the cemetery organization for the represented purpose;

(5)  makes more than one interment in a plot in a cemetery operated by a cemetery organization other than as provided by Section 711.0395;

(6)  removes remains from a plot in a cemetery operated by a cemetery organization without complying with Section 711.004;

(7)  offers or receives monetary inducement to solicit business for a cemetery broker; or

(8)  fails or refuses to keep records of sales or resales or to collect and remit fees as required by Section 711.0381[~~; or~~

[~~(9)  fails or refuses to register as a cemetery broker as required by Subchapter C-1~~].

SECTION 42.  Section 711.056(a), Health and Safety Code, is amended to read as follows:

(a)  If after a hearing conducted as provided by Chapter 2001, Government Code, the trier of fact finds that a violation of this chapter or a rule of the Finance Commission of Texas establishes a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission, the trier of fact may recommend to the commissioner that the maximum administrative penalty permitted under Section 711.055 be imposed on the person committing the violation or that the commissioner cancel or not renew[~~:~~

[~~(1)  the person's registration under Subchapter C-1, if the person is registered under that subchapter; or~~

[~~(2)~~]  the person's permit under Chapter 154, Finance Code, if the person holds such a permit.

SECTION 43.  Section 711.059(a), Health and Safety Code, is amended to read as follows:

(a)  The commissioner may issue an order to seize accounts in which funds from the sale or resale of the exclusive right of sepulture in a plot, including earnings, may be held and may issue an order to seize the records that relate to the sale or resale of the exclusive right of sepulture in a plot if the commissioner finds, by examination or other credible evidence, that the person:

(1)  failed to remit a fee in accordance with Section 711.0381;

(2)  misappropriated, converted, or illegally withheld or failed or refused to pay on demand money entrusted to the person that belongs to a cemetery organization under an instrument of conveyance; or

(3)  refused to submit to examination by the department[~~;~~

[~~(4)  was the subject of an order to cancel, suspend, or refuse a registration under Subchapter C-1; or~~

[~~(5)  is required to register under Subchapter C-1 and is not registered or has transferred the ownership of the business that required registration to another person who is not registered~~].

SECTION 44.  Sections 711.082(a) and (b), Health and Safety Code, are amended to read as follows:

(a)  The department shall administer Subchapter [~~Subchapters~~] C [~~and C-1~~] relating to cemetery brokers.

(b)  The commission may adopt reasonable rules concerning:

(1)  fees to defray the cost of administering Subchapter [~~Subchapters~~] C [~~and C-1~~];

(2)  the retention and inspection of records relating to the sale or resale of the exclusive right of sepulture in a plot;

(3)  changes in the management or control of a cemetery broker's business; and

(4)  any other matter relating to the enforcement and administration of Subchapter [~~Subchapters~~] C [~~and C-1~~].

SECTION 45.  Section 712.0036, Health and Safety Code, is amended to read as follows:

Sec. 712.0036.  TERM OF CERTIFICATE OF AUTHORITY. (a)  The Finance Commission of Texas by rule shall prescribe the term of and renewal procedures for a [~~An initial~~] certificate of authority [~~expires March 1 of the year after the year the certificate is~~] issued under this chapter[~~. The certificate must be renewed at that time and by March 1 of each following year~~].

(b)  If the Finance Commission of Texas prescribes the term of a certificate of authority issued under this chapter for a period other than one year, the finance commission shall prorate any applicable fees as necessary to reflect the term of the certificate.

SECTION 46.  Section 712.0037(a), Health and Safety Code, is amended to read as follows:

(a)  As a condition of renewal, a certificate holder must meet the qualifications and satisfy the requirements that apply to an applicant for a new certificate of authority. Additionally, not later than the certificate's [~~annual~~] renewal date, a certificate holder shall:

(1)  pay a [~~an annual~~] renewal fee in an amount established by Finance Commission of Texas rule; and

(2)  submit a renewal report under oath and in the form and medium required by the commissioner that demonstrates that the certificate holder meets the qualifications and requirements for holding a certificate.

SECTION 47.  The following laws are repealed:

(1)  Sections 13.011(d) and (e), Finance Code;

(2)  Sections 31.203 and 181.203, Finance Code;

(3)  Section 396.001(8), Finance Code;

(4)  Subchapters B, C, and D, Chapter 396, Finance Code;

(5)  Section 396.201, Finance Code;

(6)  Subchapter G, Chapter 396, Finance Code;

(7)  Section 711.0381(a), Health and Safety Code; and

(8)  Subchapter C-1, Chapter 711, Health and Safety Code.

SECTION 48.  (a)  Except as provided by Subsection (b) of this section, Section 11.110, Finance Code, as amended by this Act, applies to a member of the Finance Commission of Texas appointed before, on, or after the effective date of this Act.

(b)  A member of the Finance Commission of Texas who, before the effective date of this Act, completed the training program required by Section 11.110, Finance Code, as that law existed before the effective date of this Act, is required to acknowledge that the member received and reviewed the training manual required by Section 11.110, Finance Code, as amended by this Act. A member of the finance commission described by this subsection may not vote, deliberate, or be counted as a member in attendance at a meeting of the finance commission held on or after December 1, 2019, until the member of the finance commission acknowledges that the member received and reviewed the training manual.

SECTION 49.  Section 154.104, Finance Code, as amended by this Act, and Sections 712.0036 and 712.0037, Health and Safety Code, as amended by this Act, apply only to a permit or certificate of authority issued or renewed on or after September 1, 2019. A permit or certificate of authority issued or renewed before that date is governed by the law in effect immediately before the effective date of this Act, and the former law is continued in effect for that purpose.

SECTION 50.  (a)  On the effective date of this Act, a certificate of registration that was issued under Section 396.106, Finance Code, a certificate that was issued to operate in this state under Section 396.152, Finance Code, or a registration that was issued under Subchapter C-1, Chapter 711, Health and Safety Code, expires.

(b)  The repeal of a law by this Act does not entitle a person to a refund of an application, registration, or other fee paid by the person before the effective date of this Act.

SECTION 51.  The changes in law made by this Act do not affect the validity of a disciplinary action or other proceeding that was initiated before the effective date of this Act and that is pending before a court or other governmental entity on that date.

SECTION 52.  (a)  A violation of a law that is repealed by this Act is governed by the law in effect on the date the violation was committed, and the former law is continued in effect for that purpose.

(b)  For purposes of this section, a violation was committed before the effective date of this Act if any element of the violation occurred before that date.

SECTION 53.  This Act takes effect September 1, 2019.

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