

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:

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

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

4 Sec. 651.151. GENERAL LICENSING POWERS AND DUTIES.

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

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

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

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

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

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

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

1 the commission. The record [~~file~~] must include:

2 (1) the subject matter of the complaint;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

- 25 (1) be at least 18 years of age;
- 26 (2) have graduated from an accredited high school or
27 passed an examination prescribed by the Texas Education Agency;

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

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

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

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

13 ~~[(1)]~~ completes all of the requirements of the
14 provisional license program~~[- and~~

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

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

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

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

27 (1) laws applicable to vital statistics pertaining to

1 dead human bodies; and

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

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

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

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

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

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

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

1 SECTION 11. Sections 651.255, 651.256, 651.258, and
2 651.259, Occupations Code, are amended to read as follows:

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

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

- 8 (1) [~~(A)~~] the art and technique of funeral directing;
- 9 (2) [~~(B)~~] the signs of death;
- 10 (3) [~~(C)~~] the manner by which death may be determined;
- 11 (4) [~~(D)~~] sanitation and hygiene;
- 12 (5) [~~(E)~~] mortuary management and mortuary law;
- 13 (6) [~~(F)~~] business and professional ethics; and
- 14 (7) [~~(G)~~] other subjects that may be taught in a

15 recognized school or college of mortuary science[~~, and~~

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

18 [~~(A) laws applicable to vital statistics~~
19 ~~pertaining to dead human bodies, and~~

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

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

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

- 1 (1) [~~(A)~~] the anatomy of the human body, including:
2 (A) [~~(i)~~] the cavities of the human body; and
3 (B) [~~(ii)~~] the arterial and venous system of the
4 human body;
5 (2) [~~(B)~~] blood and discoloration;
6 (3) [~~(C)~~] bacteriology and hygiene;
7 (4) [~~(D)~~] pathology;
8 (5) [~~(E)~~] chemistry and embalming;
9 (6) [~~(F)~~] arterial and cavity embalming;
10 (7) [~~(G)~~] restorative art;
11 (8) [~~(H)~~] disinfecting;
12 (9) [~~(I)~~] embalming special cases;
13 (10) [~~(J)~~] contagious and infectious diseases;
14 (11) [~~(K)~~] mortuary management;
15 (12) [~~(L)~~] care, preservation, transportation, and
16 disposition of dead human bodies;
17 (13) [~~(M)~~] sanitary science; and
18 (14) [~~(N)~~] other subjects that may be taught in a
19 recognized school or college of mortuary science~~[, and~~
20 ~~[(2) a written examination developed by the commission~~
21 ~~or developed for the commission by contract on:~~
22 ~~[(A) laws applicable to vital statistics~~
23 ~~pertaining to dead human bodies, and~~
24 ~~[(B) local and state rules and laws relating to~~
25 ~~the care and disposition of dead human bodies].~~

26 Sec. 651.258. LICENSE ISSUANCE. A [~~On issuance of a funeral~~
27 ~~director's license or an embalmer's license under this chapter, a~~

1 ~~majority of the commission members shall sign the license. The]~~
2 license issued by the commission under this subchapter authorizes
3 the license holder to practice embalming, funeral directing, or
4 both.

5 Sec. 651.259. APPLICATION BY OUT-OF-STATE LICENSE HOLDER.

6 (a) The commission shall waive any requirement for a funeral
7 director's license or an embalmer's license for an applicant who
8 holds a license issued by another state, country, or territory that
9 has license requirements substantially equivalent to the
10 requirements of this state and who meets the requirements of this
11 section. The commission may waive any license requirement for an
12 applicant who holds a license issued by another state that does not
13 have license requirements substantially equivalent to those of this
14 state and who meets the requirements of this section. [~~The~~
15 ~~applicant shall pay a license fee in an amount set by the~~
16 ~~commission.~~]

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

19 (1) a sworn statement that:

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

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

26 (C) no proceeding has been instituted against the
27 applicant for the cancellation, suspension, or revocation of the

1 license in the state, country, or territory that issued the
2 license; and

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

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

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

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

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

15 (c) The affidavit must be made by:

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

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

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

24 [~~(e)~~] An applicant must submit to [~~The commission shall~~
25 ~~conduct~~] a criminal background check after submitting a license
26 application [~~on each applicant~~]. An applicant is not eligible for a
27 license under this section if the applicant has, in the 10 years

1 preceding the date of the application, been finally convicted of [~~a~~
2 ~~misdemeanor involving moral turpitude or~~] a felony.

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

5 [~~(1)~~] provide proof that [~~+~~

6 [~~(A) the license is in good standing,~~

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

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

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

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

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

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

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

27 SECTION 12. The heading to Section 651.260, Occupations

1 Code, is amended to read as follows:

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

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

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

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

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

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

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

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

22 Sec. 651.266. CONTINUING EDUCATION. The commission by rule
23 may require continuing education as a condition for license renewal
24 except for a license holder described by Section 651.155 or an
25 applicant for renewal described by Section 651.265(b) [~~651.265~~].

26 If the commission requires continuing education, the commission
27 shall require completion of a minimum number of hours of ethics

1 training as a required part of that education.

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

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

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

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

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

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

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

26 (3) completing any continuing education required
27 under Section 651.266.

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

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

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

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

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

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

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

25 (4) passing the examination under Section 651.254.

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

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

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

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

9 (2) pays a fee that is equal to two times the normally
10 required renewal fee; [~~and~~]

11 (3) satisfies any other commission requirements,
12 including any continuing education requirements under Section
13 651.266; and

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

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

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

20 SECTION 20. Section 651.351, Occupations Code, is amended
21 by amending Subsections (d), (f), (g), and (h) and adding
22 Subsection (h-1) to read as follows:

23 (d) A funeral establishment must:

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

27 (2) except as provided by Subsection (i), be located

1 at a fixed place that is not tax-exempt property or a cemetery;

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

4 (4) have access to vehicles [~~rolling stock~~] consisting
5 of at least one motor hearse;

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

9 (6) include other facilities as necessary to comply
10 with the sanitary codes of this state and of the municipality in
11 which the room is located; [~~and~~]

12 (7) include a display containing sufficient
13 merchandise to permit reasonable selection, including at least
14 [~~five adult caskets,~~] two [~~of which must be~~] full-size caskets, one
15 of which must be the least expensive casket offered, that are [~~and~~]
16 displayed in a setting that allows for private selection; and

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

19 (f) Other than the two full-size caskets, the merchandise
20 [~~The least expensive casket~~] displayed under Subsection (d)(7)
21 [~~must be a full-size casket displayed in the same general manner as~~
22 ~~the other full-size caskets are displayed. The three adult caskets~~
23 ~~that are not required to be full-size under Subsection (d)(7)] may
24 be displayed:~~

25 (1) in a partial panel display; or

26 (2) by video or brochure, online, or in any other
27 manner.

1 (g) The commission may exempt a funeral establishment from
2 the requirements of Subsection (d)(5) if~~+~~

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

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

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

10 (3) ~~[(C)]~~ that no embalming services will be performed
11 at the establishment~~+, and~~

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

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

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

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

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

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

27 Sec. 651.352. COMMERCIAL EMBALMING [~~EMBALMERS~~]

1 ESTABLISHMENT LICENSE REQUIREMENTS.

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

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

6 (1) embalms for other licensed funeral
7 establishments; and

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

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

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

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

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

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

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

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

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

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

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

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

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

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

23 and

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

27 [~~(3)~~] making any disclosure to the family member or

1 other person that is required by federal or state law or regulation.

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

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

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

- 11 (1) the commission; and
12 (2) the person who provided the consent, as provided
13 by Section 711.002, Health and Safety Code [~~and~~
14 ~~[(3) the next of kin of the deceased person]~~].

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

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

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

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

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

26 (2) provide to a prospective customer inquiring in
27 person about any funeral service or merchandise a retail price list

1 for the prospective customer to keep;

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

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

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

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

12 (1) embalms a body without:

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

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

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

22 [~~3~~] allows the presence or participation of a
23 student for credit or satisfaction of academic requirements during
24 the embalming of a dead human body without complying with Section
25 651.407; or

26 (3) [~~4~~] places a chemical or substance on or in a
27 dead human body to disinfect or preserve the body or to restore body

1 tissues and structures without holding an embalmer's license.

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

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

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

17 SECTION 28. The heading to Section [651.459](#), Occupations
18 Code, is amended to read as follows:

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

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

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

24 (1) wilfully makes a false statement on:

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

27 (B) a document required by this chapter or a rule

1 adopted under this chapter;

2 (2) engages in dishonest [~~fraudulent~~],
3 unprofessional, or negligent [~~deceptive~~] conduct in providing
4 embalming services or funeral services or merchandise to a customer
5 [~~+~~

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

10 (3) [~~(4)~~] causes the execution of a document by the
11 use of fraud, deceit, or misrepresentation;

12 (4) [~~(5)~~] directly or indirectly employs a person to
13 solicit individuals or institutions by whose influence dead human
14 bodies may be turned over to a particular funeral director,
15 embalmer, or funeral establishment;

16 (5) [~~(6)~~] misappropriates funds held by a license
17 holder, a funeral establishment, an employee or agent of the
18 funeral establishment, or another depository, that create an
19 obligation to provide a funeral service or merchandise, including
20 retaining for an unreasonable time excess funds paid by or on behalf
21 of the customer for which the customer is entitled to a refund; or

22 (6) [~~(7)~~] performs acts of funeral directing or
23 embalming that are outside the licensed scope and authority of the
24 license holder, or performs acts of funeral directing or embalming
25 in a capacity other than that of an employee, agent, subcontractor,
26 or assignee of a licensed funeral establishment that has contracted
27 to perform those acts.

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

6 SECTION 30. Section 651.461, Occupations Code, is amended
7 to read as follows:

8 Sec. 651.461. DEFENSE TO VIOLATION. A person licensed
9 under this chapter does not violate this chapter by engaging in
10 conduct regarding funeral arrangements under the direction of a
11 person who:

12 (1) represents in writing to the license holder that
13 the person is authorized to make funeral arrangements for the
14 deceased; and

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

17 SECTION 31. Section 651.508, Occupations Code, is
18 transferred to Subchapter J, Chapter 651, Occupations Code,
19 redesignated as Section 651.462, Occupations Code, and amended to
20 read as follows:

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

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

27 (a) After notice and the opportunity for a hearing [~~as~~

1 ~~provided by this subchapter~~], the commission may issue a letter of
2 warning [~~reprimand~~], assess an administrative penalty, revoke or
3 [~~7~~] suspend a license, place a license holder on probation [~~or~~
4 ~~probate the suspension of a license or provisional license~~], or
5 impose any combination of those penalties if the commission
6 determines that a person regulated under this chapter has violated
7 [~~for a violation of~~] this chapter or a rule adopted under this
8 chapter.

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

11 Sec. 651.502. LICENSE DENIAL[~~, EFFECT OF CRIMINAL~~
12 ~~CONVICTION~~].

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

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

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

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

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

27 (B) previously held an establishment license

1 that was suspended or revoked; or

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

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

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

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

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

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

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

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

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

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

27 (a) If the commission places a license holder on probation

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

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

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

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

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

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

22 (a) A proceeding conducted by the commission relating to an
23 appeal of the denial of a license or provisional license, the
24 suspension or revocation of a license, ~~[the issuance of a~~
25 ~~reprimand,~~] or the imposition of an administrative penalty under
26 Subchapter L ~~[assessed after a hearing as provided by Section~~
27 ~~651.551]~~ and judicial review of the proceeding are governed by

1 Chapter 2001, Government Code.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5 (b) [~~The penalty may be assessed in the manner provided by~~
6 ~~this subchapter or after a hearing under Section 651.506.~~] If an
7 administrative penalty is assessed after a hearing under Section
8 651.506, the commission shall follow the procedures described in
9 Sections 651.555 through 651.558.

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

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

- 14 (1) the seriousness of the violation;
- 15 (2) the threat the violation poses to health and
16 safety;
- 17 (3) the history of previous violations;
- 18 (4) the amount necessary to deter a future violation;
- 19 (5) efforts made to correct the violation;
- 20 (6) the sanctions schedule [~~guidelines~~] adopted under
21 Section 651.5075 [~~651.5515~~]; and
- 22 (7) any other matter that justice requires.

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

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

1 report stating:

- 2 (1) the facts on which the determination is based;
- 3 (2) that an administrative penalty is to be imposed;
- 4 and
- 5 (3) the amount of the penalty.

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

- 9 (1) a copy of the report;
- 10 (2) a statement of the right of the person to a hearing
11 relating to the alleged violation; and
- 12 (3) a statement of the amount of the penalty [~~and~~
- 13 [~~(4) an explanation for any significant deviation from~~
- 14 ~~the penalty amount assessed for similar violations]~~.

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

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

- 19 (1) make a written request for a hearing; or
- 20 (2) pay the administrative penalty to the commission.

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

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

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

- 27 (1) acts or holds the person out as a funeral director,

1 embalmer, or provisional license holder without being licensed
2 under this chapter;

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

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

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

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

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

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

- 19 (1) Section 651.257;
- 20 (2) Section 651.2595;
- 21 (3) Section 651.264;
- 22 (4) Section 651.354(d);
- 23 (5) Section 651.355;
- 24 (6) Sections 651.502(c) and (d);
- 25 (7) Section 651.5026;
- 26 (8) Section 651.504;
- 27 (9) Sections 651.506(g) and (h);

1 (10) Section 651.5061; and

2 (11) Section 651.559.

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

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

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

27 SECTION 52. Section 651.267, Occupations Code, as amended

1 by this Act, applies only to a person who applies for reissuance of
2 a license on or after the effective date of this Act. A person who
3 applies for reissuance of a license before the effective date of
4 this Act is governed by the law in effect on the date the person
5 applied for reissuance, and the former law is continued in effect
6 for that purpose.

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

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

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

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