

By: Raymond

H.B. No. 4217

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 CREMATORY SERVICES.

17 (a) The commission shall regulate crematory services as provided  
18 by this chapter and Chapter 716, Health and Safety Code.

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

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

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

- 1 (1) the subject matter of the complaint;
- 2 (2) the date the complaint is received by the  
3 commission;
- 4 (3) the name of the person who filed the complaint;
- 5 (4) the name of each person contacted in relation to  
6 the complaint;
- 7 (5) a summary of the results of the review or  
8 investigation of the complaint; and
- 9 (6) an explanation of the reason the complaint [~~file~~]  
10 was closed, if the commission closed the complaint [~~file~~] without  
11 taking action other than to investigate the complaint.

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

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

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

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

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

5 Sec. 651.2525 [651.164]. LICENSE EXPIRATION; TERM. (a) A  
6 license issued under this subchapter [~~chapter, other than a~~  
7 ~~provisional license,~~] is valid for a term of [~~one or~~] two years [~~as~~  
8 ~~provided by commission rule~~].

9 (b) The commission by rule shall adopt a system under which  
10 licenses expire on various dates during the year. For a license that  
11 is issued for less than a full term, the commission shall prorate  
12 license fees on a monthly basis so that the license holder pays only  
13 that portion of the license fee that is allocable to the number of  
14 months during which the license is valid. On renewal of the license  
15 on the new expiration date, the total license renewal fee is  
16 payable.

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

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

- 22 (1) be at least 18 years of age;
- 23 (2) have graduated from an accredited high school or  
24 passed an examination prescribed by the Texas Education Agency;
- 25 (3) have graduated from an accredited school or  
26 college of mortuary science;
- 27 (4) unless the applicant holds a reciprocal license,

1 have completed the requirements of the provisional license program;  
2 and

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

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

10 ~~[(1)]~~ completes all of the requirements of the  
11 provisional license program ~~[+ and~~

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

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

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

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

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

26 (2) local and state rules and laws relating to the  
27 preparation, transportation, care, and disposition of dead human

1 bodies. [~~LICENSE EXAMINATIONS; RESULTS. (a) The examinations for~~  
2 ~~a funeral director's license and an embalmer's license shall be held~~  
3 ~~at least annually. The examinations shall be given at the time and~~  
4 ~~place designated by the commission. The commission shall give~~  
5 ~~notice of the examinations.~~

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

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

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

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

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

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

25 SECTION 11. Sections [651.255](#), [651.256](#), [651.258](#), and  
26 [651.259](#), Occupations Code, are amended to read as follows:

27 Sec. 651.255. EXAMINATION [~~EXAMINATIONS~~] REQUIRED FOR

1 FUNERAL DIRECTOR'S LICENSE. The commission shall administer or  
2 arrange for the administration of[+]

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

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

6 (2) ~~[(B)]~~ the signs of death;

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

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

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

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

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

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

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

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

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

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

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

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

27 (B) ~~[(ii)]~~ the arterial and venous system of the

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

23           Sec. 651.258. LICENSE ISSUANCE. A [~~On issuance of a funeral~~

24 ~~director's license or an embalmer's license under this chapter, a~~

25 ~~majority of the commission members shall sign the license. The]~~

26 license issued by the commission under this subchapter authorizes

27 the license holder to practice embalming, funeral directing, or

1 both.

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

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

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

16 (1) a sworn statement that:

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

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

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

27 (D) [~~(C)~~] no prosecution is pending against the

1 applicant in a state or federal court for an offense that, under the  
2 laws of this state, is a felony, or is a misdemeanor related to the  
3 practice of embalming or funeral directing; ~~and~~

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

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

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

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

12 (c) The affidavit must be made by:

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

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

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

22 ~~[(e) The commission shall conduct]~~ a criminal background  
23 check after submitting a license application ~~[on each applicant].~~

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

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

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

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

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

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

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

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

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

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

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

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

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

26                   (a) A license holder may apply to the commission for a  
27 replacement ~~[duplicate]~~ license:

1           (1) if a license issued under this chapter is lost or  
2 destroyed; or

3           (2) as needed to comply with Section 651.261.

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

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

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

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

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

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

25           SECTION 16. Section 651.165, Occupations Code, is  
26 transferred to Subchapter F, Chapter 651, Occupations Code,  
27 redesignated as Section 651.2661, Occupations Code, and amended to

1 read as follows:

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

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

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

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

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

19                   (2) paying any applicable fees, including a renewal  
20 fee that is equal to two times the normally required renewal fee;  
21 and

22                   (3) completing any continuing education required  
23 under Section 651.266.

24           (e) A person who was licensed in this state, moved to  
25 another state, and is currently licensed and has been in practice in  
26 the other state for the two years preceding the date of application  
27 may obtain a new license without reexamination if both licenses are

1 in good standing. The person must pay to the commission a fee that  
2 is equal to two times the normally required renewal fee for the  
3 license.

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

8 SECTION 17. Section [651.1655](#), Occupations Code, is  
9 transferred to Subchapter F, Chapter [651](#), Occupations Code,  
10 redesignated as Section [651.2662](#), Occupations Code, and amended to  
11 read as follows:

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

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

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

19 (3) completing any continuing education required  
20 under Section [651.266](#); and

21 (4) passing the examination under Section [651.254](#).

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

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

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

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

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

7 (3) satisfies any other commission requirements,  
8 including any continuing education requirements under Section  
9 651.266; and

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

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

14 SUBCHAPTER H. LICENSE REQUIREMENTS: FUNERAL AND COMMERCIAL  
15 EMBALMING [~~EMBALMER~~] ESTABLISHMENTS

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

19 (d) A funeral establishment must:

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

23 (2) except as provided by Subsection (i), be located  
24 at a fixed place that is not tax-exempt property or a cemetery;

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

27 (4) have access to vehicles [~~rolling stock~~] consisting

1 of at least one motor hearse;

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

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

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

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

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

21 (1) in a partial panel display; or

22 (2) by video or brochure, online, or in any other  
23 manner.

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

27 (h-1) An ~~[The]~~ exemption under Subsection (g) remains in

1 effect until the conditions required for the exemption are no  
2 longer met~~[+]~~

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

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

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

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

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

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

16 (1) embalms for other licensed funeral  
17 establishments; and

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

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

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

27 (c) A commercial embalming [~~embalmers~~] establishment may

1 employ an embalmer only if the embalmer is licensed under this  
2 chapter.

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

6 SECTION 23. The heading to Section 651.401, Occupations  
7 Code, is amended to read as follows:

8 Sec. 651.401. FIRST CALL; REMOVAL OF DEAD HUMAN BODY.

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

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

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

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

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

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

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

- 26 (1) provide a prospective customer at the beginning of  
27 the arrangement process with a copy of the brochure required by

1 Section 651.404;

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

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

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

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

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

15 (1) embalms a body without:

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

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

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

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

1 651.407; or

2 (3) [~~(4)~~] places a chemical or substance on or in a  
3 dead human body to disinfect or preserve the body or to restore body  
4 tissues and structures without holding an embalmer's license.

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

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

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

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

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

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

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

27 (1) wilfully makes a false statement on:

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

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

5 (2) engages in dishonest [~~fraudulent~~],  
6 unprofessional, or negligent [~~deceptive~~] conduct in providing  
7 embalming services or funeral services or merchandise to a customer  
8 [+

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

13 (3) [~~(4)~~] causes the execution of a document by the  
14 use of fraud, deceit, or misrepresentation;

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

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

25 (6) [~~(7)~~] performs acts of funeral directing or  
26 embalming that are outside the licensed scope and authority of the  
27 license holder, or performs acts of funeral directing or embalming

1 in a capacity other than that of an employee, agent, subcontractor,  
2 or assignee of a licensed funeral establishment that has contracted  
3 to perform those acts.

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

9 SECTION 30. Section 651.461, Occupations Code, is amended  
10 to read as follows:

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

15 (1) represents in writing to the license holder that  
16 the person is authorized to make funeral arrangements for the  
17 deceased; and

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

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

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

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

3 (a) After notice and the opportunity for a hearing [~~as~~  
4 ~~provided by this subchapter~~], the commission may issue a letter of  
5 warning [~~reprimand~~], assess an administrative penalty, revoke  
6 or[~~7~~] suspend a license, place a license holder on probation [~~or~~  
7 ~~probate the suspension of a license or provisional license~~], order  
8 a license holder to pay a refund under Section 651.603, or impose  
9 any combination of those penalties if the commission determines  
10 that a person regulated under this chapter has violated [~~for a~~  
11 ~~violation of~~] this chapter or a rule adopted under this chapter.

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

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

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

19 (a) After a hearing before the commission, the [~~The~~  
20 ~~commission may~~][~~7~~, ~~before a hearing or a waiver of a right to a~~  
21 ~~hearing~~], refuse to issue or renew:

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

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

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

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

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

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

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

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

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

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

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

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

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

27 SECTION 37. Section 651.505, Occupations Code, is amended

1 by amending Subsection (a) and adding Subsection (d) to read as  
2 follows:

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

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

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

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

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

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

25 (a) A proceeding conducted by the commission relating to an  
26 appeal of the denial of a license or provisional license, the  
27 suspension or revocation of a license, [~~the issuance of a~~

1 ~~reprimand,~~] or the imposition of an administrative penalty under  
2 Subchapter L [~~assessed after a hearing as provided by Section~~  
3 ~~651.551~~] and judicial review of the proceeding are governed by  
4 Chapter 2001, Government Code.

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

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

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

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

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

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

26 (b) A settlement reached through an informal proceeding is  
27 finalized through the execution of an agreed order. The agreed

1 order must specify the violation found, any administrative penalty  
2 assessed, and the consequences of failing to comply with the terms  
3 of the agreed order.

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

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

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

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

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

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

27 (b) The commission shall [~~consider using focus groups to~~]

1 obtain business and consumer input to match appropriate sanctions  
2 [~~penalties~~] to violations before proposing the rules under this  
3 section.

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

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

8 (b) [~~The penalty may be assessed in the manner provided by~~  
9 ~~this subchapter or after a hearing under Section 651.506.~~] If an  
10 administrative penalty is assessed after a hearing under Section  
11 651.506, the commission shall follow the procedures described in  
12 Sections 651.555 through 651.558.

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

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

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

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

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

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

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

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

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

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

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

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

27 SECTION 46. Section 651.602(a), Occupations Code, is

1 amended to read as follows:

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

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

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

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

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

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

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

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

- 22 (1) Section 651.257;
- 23 (2) Section 651.264;
- 24 (3) Sections 651.502(c) and (d);
- 25 (4) Section 651.5026;
- 26 (5) Section 651.504;
- 27 (6) Sections 651.506(g) and (h);

1           (7) Section 651.5061; and

2           (8) 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, 2021.