

BILL ANALYSIS

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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Chapter 651 of the Occupations Code governs cemetery and crematory services, funeral directing, and embalming. According to the Texas Funeral Service Commission, it has not been updated in over ten years.

The goal of this bill is to cleanup and modernize Chapter 651 so that it reflects the existing state of both the agency and the businesses it regulates.

As proposed, S.B. 1251 amends current law relating to the Texas Funeral Service Commission, authorizes fees, and provides a criminal penalty.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Texas Funeral Service Commission is modified in SECTION 7 (Sections 651.157 and 651.158, Occupations Code), SECTION 11 (Section 651.202, Occupations Code), SECTION 14 (Section 651.2525, Occupations Code), and SECTION 58 (Section 651.5075, Occupations Code) of this bill.

Rulemaking authority is expressly granted to the Texas Funeral Service Commission SECTION 15 (Section 651.253, Occupations Code), SECTION 26 (Section 651.303, Occupations Code), SECTION 31 (Section 651.3055, Occupations Code), and SECTION 57 (Section 651.5056, Occupations Code) of this bill.

Rulemaking authority previously granted to the Texas Funeral Service Commission is rescinded in SECTION 62 (Sections 651.303 and 651.304, Occupations Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 651.051(a), Occupations Code, as follows:

(a) Provides that the Texas Funeral Service Commission (TFSC) consists of seven members appointed by the governor of the State of Texas (governor), with the advice and consent of the senate as follows:

- (1) Makes no change to this subdivision;
- (2) one member who is licensed as a funeral director and is a registered cemetery owner or operator; and
- (3) Makes no change to this subdivision.

SECTION 2. Amends Section 651.055(c), Occupations Code, as follows:

(c) Provides that it is a ground for removal from TFSC that a member:

- (1) and (2) Makes no change to these subdivisions;

(3) violates a prohibition established by Sections 651.053(a) (defining "Texas trade association")-(c) (prohibiting an individual from being a member of TFSC under certain conditions), rather than Sections 651.053(a)-(e) or 651.506(h);

(4) and (5) Makes no change to these subdivisions.

SECTION 3. Amends the heading to Section 651.101, Occupations Code, to read as follows:

Sec. 651.101. EXECUTIVE DIRECTOR.

SECTION 4. Amends the heading to Section 651.151, Occupations Code, to read as follows:

Sec. 651.151. GENERAL LICENSING POWER AND DUTIES.

SECTION 5. Redesignates Section 651.151(c), Occupations Code, as Section 651.1511, Occupations Code, and amends it to delete the designation of Subsection (c) and makes no further change.

SECTION 6. Amends Section 651.154, Occupations Code, as follows:

Sec. 651.154. FEES. (a) Requires TFSC to set the following fees in amounts reasonable and necessary to administer this chapter:

(1) the funeral director's and embalmer's license fee, renewal fee, late renewal penalty, duplicate license fee, replacement license fee, and reciprocal license fee, rather than the funeral director's and embalmer's application fee, license fee, duplicate license fee, and reciprocal license fee; and

(2) Makes no change to this subdivision.

(b) Requires TFSC to set the provisional license application fee, examination fee, renewal fee, and late renewal penalty in amounts reasonable and necessary to administer the provisional license program.

(c) Requires TFSC to set the following fees in amounts reasonable and necessary to administer the continuing education program under this chapter: the continuing education provider fee and continuing education course fee and the continuing education noncompliance fee. Deletes existing text prohibiting TFSC from charging a fee to a perpetual care cemetery, including a fee for issuing or renewing a license issued under this chapter.

SECTION 7. Amends Sections 651.157, 651.1571, and 651.158, Occupations Code, as follows:

Sec. 651.157. New heading: INSPECTION OF CREMATORY OR FUNERAL ESTABLISHMENT. (a) Requires that a crematory or funeral establishment be inspected before an initial license may be issued to the crematory or funeral establishment.

(a-1) Creates this subsection from existing text. Deletes a reference to licensed cemetery in a list of facilities to be inspected at least once every two years by an agent of TFSC or by an agent of the state or political subdivision authorized by TFSC to make inspections.

(b) Requires TFSC, if TFSC finds a violation of this chapter or of Chapter 193 (Death Records), 361 (Solid Waste Disposal Act), 711 (General Provisions Relating to Cemeteries) or 716 (Crematories), Health and Safety Code, rather than Chapter 193, 361, 711, 714 (Miscellaneous Provisions Relating to Cemeteries), 715 (Certain Historic Cemeteries), or 716, Health and Safety Code, to inspect the crematory or funeral establishment, rather than the cemetery, crematory, or

funeral establishment, annually until TFSC determines that the crematory or funeral establishment is free of violations.

(c) Requires that a report of each inspect made under this section be retained in the crematory's or funeral establishment's licensing file. Deletes existing text requiring that the report be field with TFSC.

(d) Requires TFSC by rule to establish:

(1) Deletes a reference to cemetery; and

(2) criteria, including consideration of the crematory's or funeral establishment's inspection and complaint history, regarding when TFSC should inspect a crematory or funeral establishment based on the risk of a violation at a crematory or funeral establishment. Makes nonsubstantive changes.

(e) Deletes reference to a premises on which interment is practiced from a list of facilities that are required to be open to inspection by certain individuals.

(f) Requires an agent, before a TFSC agent inspects a crematory or funeral establishment, rather than cemetery, crematory, or funeral establishment, to review the inspection reports filed with TFSC on the crematory or funeral establishment. Requires the agent, during the inspection, to determine whether previously identified problems have been corrected and whether a pattern of violations exists. Requires TFSC to consider the information from the inspection reports in determining whether a penalty should be imposed against a crematory or funeral establishment and makes a nonsubstantive change.

Sec. 651.1571. New heading: INSPECTION REQUIREMENTS FOR CERTAIN CEMETERIES. (a) Prohibits a cemetery licensed by TFSC from being inspected unless:

(1) an interment has occurred in the cemetery within the two years preceding the inspection; or

(2) TFSC has received a complaint about the cemetery.

(b) Requires TFSC to give lower priority to an inspection of a cemetery than to an inspection of a crematory or funeral establishment.

Deletes existing Subsection (a) text providing that this section and Section 651.157 do not apply to perpetual care cemeteries. Deletes existing Subsection (b) prohibiting a cemetery, except as provided by Section 651.157(b), from being inspected unless an interment has occurred in the cemetery within the two years preceding the inspection or TFSC has received a complain about the cemetery. Makes nonsubstantive changes.

Sec. 651.158. INSPECTION OF CERTAIN FACILITIES. (a) Authorizes TFSC to require a funeral establishment that has solid waste disposal and sanitation facilities that have not been inspected by the Department of State Health Services, rather than the Texas Department of Health, to obtain inspection of those facilities by an entity other than the Department of States Health Services, rather than the Texas Department of Health.

(b) Makes no change to this subsection.

SECTION 8. Transfers Section 651.004, Occupations Code, to Subchapter D, Chapter 651, Occupations Code, and redesignates it as Section 641.168, as follows:

Sec. 651.168. REGULATION OF CEMETERY AND CREMATORY SERVICES. (a) Makes no change to this subsection.

(b) Makes no change to this subsection.

SECTION 9. Amends Section 651.201, Occupations Code, by adding Subsections (c) and (d), as follows:

(c) Authorizes a funeral establishment to print additional copies of the brochure only if TFSC is unable to provide the number of brochures needed by the funeral establishment.

(d) Authorizes a funeral establishment to provide a link on the establishment's website to the brochure on TFSC's website.

SECTION 10. Amends Subchapter E, Chapter 651, Occupations Code, by adding Section 651.2015, as follows:

Sec. 651.2015. WEBSITE. Authorizes TFSC to allow a funeral establishment that maintains a website to link to TFSC's website.

SECTION 11. Amends Section 651.202(a), Occupations Code, to require TFSC by rule to establish methods by which consumers and service recipients are notified of certain information for the purpose of directing complaints to TFSC. Authorizes TFSC to provide for that notice:

(1) and (2) Makes no change to these subdivisions;

(3) in a bill for service provided by a person regulated under this chapter; or

(4) any other place TFSC considers appropriate.

SECTION 12. Amends Section 651.203(a), Occupations Code, to require TFSC, subject to TFSC's records retention policy, to maintain a file on each written complaint filed with TFSC and sets forth information to be included in the file.

SECTION 13. Amends Section 651.252, Occupations Code, as follows:

Sec. 651.252. LICENSE APPLICATION. (a) Authorizes TFSC to adopt license application requirements for a funeral director's license or an embalmer's license, rather than requires an applicant for a funeral director's license or an embalmer's license to submit a written license application to TFSC and pay the application fee.

(b) Authorizes TFSC to provide that a person applies for a funeral director's or embalmer's license by completing a provisional license program under Subchapter G (License Requirements: Provisional License Holders). Deletes existing text requiring TFSC to require an applicant to appear before at least one member of TFSC for approval of the person's application and providing that the approval is subject to review by the entire commission.

Deletes existing Subsection (c) requiring TFSC to keep a permanent, alphabetical record of each license application and the action taken on the application and requiring that the record indicate the current status of each application and license issued.

SECTION 14. Transfers Section 651.164, Occupations Code, to Subchapter F, Chapter 651, Occupations Code, redesignates it as Section 651.2525, Occupations Code, and amends it, as follows:

Sec. 651.2525. LICENSE EXPIRATION. Redesignates Section 651.164, Occupations Code, as Section 651.2525, Occupations Code. (a) Provides that a funeral director's or embalmer's license is valid for 24 months.

(b) Creates this subsection from existing text. Requires, rather than authorizes, TFSC by rule to adopt a system under which licenses expire on various dates during the year. Requires TFSC, for an initial license that is issued for a term of less than 24 months, rather than for the year in which the license expiration date is changed, to prorate license fees on a monthly basis so that each license holder pays only that portion of the license fee that is allocable to the number of months during which the license is valid.

SECTION 15. Amend Section 651.253, Occupations Code, as follows:

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

(1)-(3) Makes no change to these subdivisions;

(4) Deletes reference to a reciprocal embalmer's license; and

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

(b) Prohibits an applicant for a funeral director's license or an embalmer's license, unless the applicant is seeking a reciprocal license, from being considered for that license until the applicant completes all of the requirements of the provisional license program before the end of the provisional license term. Deletes existing text prohibiting an applicant for a funeral director's license or an embalmer's license from being considered for that license until the applicant attains a grade of at least 75 percent on the written examination given by TFSC. Makes nonsubstantive changes.

(c) Authorizes TFSC, notwithstanding Subsection (a)(3) (requiring an applicant for a funeral director's license or an embalmer's license to have graduated from an accredited school or college of mortuary science), to adopt rules to allow an applicant who graduated from a school or college of mortuary science that is no longer accredited to become licensed as a funeral director or embalmer.

SECTION 16. Amends Section 651.254, Occupations Code, as follows:

Sec. 651.254. New heading: MORTUARY LAW EXAMINATION. (a) Requires TFSC to administer or arrange for the administration of a written examination developed by TFSC or developed for TFSC under a contract on:

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

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

(b) Requires an individual, to pass the examination, to receive a grade of at least 75 percent.

Deletes existing Subsection (a) requiring that the examinations for a funeral director's license and an embalmer's license be held at least annually, requiring that the examinations be given at the time and place designated by TFSC, and requiring TFSC to give notice of the examination. Deletes existing Subsection (b) requiring TFSC, not later than the 30th day after the date a person takes a licensing examination under this chapter, to notify the person of the results of the examination. Deletes existing Subsection (c) providing that if the examination is graded or review by a testing service TFSC is required to notify the person of the results of the examination not later than the 14th day after the date TFSC receives the results from the testing service and if notice of the

examination results will be delayed for longer than 90 days after the examination date, TFSC is required to notify the person of the reason for the delay before the 90th day. Deletes existing Subsection (d) authorizing TFSC to require a testing service to notify a person of the results of the person's examination. Deletes existing Subsection (e) requiring TFSC, if requested in writing by a person who fails a licensing examination administered under this chapter, to furnish the person with an analysis of the person's performance on the examination.

SECTION 17. Amends Sections 651.255, 651.256, 651.258, and 651.259, Occupations Code, as follows:

Sec. 651.255. New heading: EXAMINATION REQUIRED FOR FUNERAL DIRECTOR'S LICENSE. Requires TFSC to administer or arrange for the administration of a written professionally prepared examination on certain funeral practices and sets forth those funeral practices. Deletes existing text requiring TFSC to administer or arrange for the administration of a written examination developed by TFSC or developed for TFSC by contract on laws applicable to vital statistics pertaining to dead human bodies and local and state rules and laws relating to the preparation, transportation, care, and disposition of dead human bodies. Makes nonsubstantive changes.

Sec. 651.256. New heading: EXAMINATION REQUIRED FOR EMBALMER'S LICENSE. Requires TFSC to administer or arrange for the administration of a written professionally prepared examination on certain funeral practices and sets forth those practices. Deletes existing text requiring TFSC to administer or arrange for the administration of a written examination developed by TFSC or developed for TFSC by contract on laws applicable to vital statistics pertaining to dead human bodies and local and state rules and laws relating to the care and disposition of dead human bodies.

Sec. 651.258. LICENSE ISSUANCE. Provides that a license issued by TFSC authorizes the license holder to practice embalming, funeral directing, or both. Makes a nonsubstantive change.

Sec. 651.259. APPLICATION BY OUT-OF-STATE LICENSE HOLDER. (a) Deletes existing text requiring the applicant to pay a license fee in an amount set by TFSC.

(b) Requires any applicant for a license under this section to file an application, rather than a sworn application, that includes:

(1) a sworn statement that:

(A) Makes no change to this paragraph;

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

(C) Creates this paragraph from existing text; and

(D) Redesignates Paragraph (C) text as Paragraph (D) and makes a nonsubstantive change;

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

(A) Makes no change to this paragraph;

(B) Makes a nonsubstantive change;

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

(c) Makes no change to this subsection.

(e) Provides that an applicant is not eligible for a license under this section if the applicant has, in the 10 years preceding the date of the application, been finally convicted of a misdemeanor involving moral turpitude or a felony. Deletes existing text requiring TFSC to conduct a criminal background check on each applicant.

(f) Requires an applicant for a license under this section to provide proof that the applicant has practiced under this license for at least:

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

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

Deletes existing text requiring an applicant for a license under this section to provide proof that the license is in good standing. Deletes existing text requiring the applicant to provide proof that the applicant has graduated from an accredited college of mortuary science and pass a written examination of not more than 50 questions on applicable state laws and TFSC rules.

(f-1) Requires an applicant under this section to successfully complete the written examination described by Section 651.254.

(g) Requires the applicant, on approval of the application, to pay license fee in an amount set by TFSC. Deletes existing text requiring TFSC to conduct the examination under Subsection (f)(2) at each regularly scheduled meeting of TFSC.

SECTION 18. Amends the heading to Section 651.260, Occupations Code, to read as follows:

Sec. 651.260. REPLACEMENT LICENSE.

SECTION 19. Amends Sections 651.260(a) and (c), Occupations Code, to change references to duplicate license to replacement license.

SECTION 20. Amends Section 651.261, Occupations Code, as follows:

Sec. 651.261. POSTING OF LICENSE. (a) Creates this subsection from existing text. Requires a license holder to conspicuously display the holder's original license, duplicate original license, or replacement license in each place of business at which the license holder practices.

(b) Requires TFSC to issue a duplicate original license on application and payment of a fee set by TFSC for the license if the license holder needs a license to display in multiple locations.

SECTION 21. Amends Section 651.266, Occupations Code, to replace a reference to an applicant for renewal described by Section 651.265 to an applicant for renewal described by Section 651.265(b).

SECTION 22. Transfers Section 651.165, Occupations Code, to Subchapter F, Chapter 651, Occupations Code, redesignates it as Section 651.2661, and amends it, as follows:

Sec. 651.2661. RENEWAL OR REINSTATEMENT OF LICENSE.

(a)-(c) Makes no change to these subsections.

(d) Authorizes a person whose license has been expired for one year or more to reinstate, rather than renew, the license by:

(1) retaking and passing the examination under Section 651.254, rather than retaking and passing the applicable examination;

(2) and (3) Makes no change to these subdivisions.

(e) Authorizes a person who was licensed in this state, moved to another state, and is currently licensed and has been in practice in the other state for the two years preceding the date of application to obtain a new license without reexamination if both licenses are in good standing.

(f) Makes no change to this subsection.

SECTION 23. Transfers Section 651.1655, Occupations Code, to Subchapter F, Chapter 651, Occupations Code, redesignates it as Section 651.2662, Occupations Code, and amends it, as follows:

Sec. 651.2662. REINSTATEMENT OF SUSPENDED LICENSE. Authorizes a person whose license has been suspended, if authorized by TFSC, to reinstate, rather than renew, the license by:

(1) Makes a nonsubstantive change;

(2) paying any penalty, rather than in addition to any penalty, assessed by TFSC;

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

(4) passing with a score of at least 75 percent the examination under Section 651.254.

SECTION 24. Amends Sections 651.267(c) and (d), Occupations Code, as follows:

(c) Requires that a hearing to determine whether to reissue a license be held before TFSC unless TFSC requires the hearing to be held before an administrative law judge, rather than a hearings officer.

(d) Authorizes a license that has been revoked to be reissued, rather than reinstated, only after the applicant:

(1) retakes and passes the examination under Section 651.254, rather than retakes and passes the applicable examination;

(2) and (3) Makes nonsubstantive changes; and

(4) pays any penalty assessed by TFSC.

SECTION 25. Amends Section 651.302, Occupations Code, as follows:

Sec. 651.302. APPLICATION; ISSUANCE OF PROVISIONAL LICENSE. (a) Requires TFSC to issue a provisional license to practice funeral directing to an applicant who:

(1) and (2) Makes no change to these subdivisions;

(3) is employed by a funeral establishment to learn funeral directing under the instruction and supervision of a funeral director, rather than is employed by a funeral director to learn funeral directing or embalming under the instruction and supervision of the funeral director;

(4) and (5) Makes nonsubstantive changes;

(6) complies with the requirements of this chapter and of TFSC.

(b) requires TFSC to issue a provisional license to practice embalming to an applicant who:

(1) and (2) Makes no change to these subdivisions;

(3) is employed by a funeral establishment or commercial embalming facility to learn embalming under the instruction and supervision of an embalmer;

(4) files an application for a provisional license on a form provided by TFSC and verified under oath by the applicant;

(5) Redesignates Subdivision (4) text as Subdivision (5); and

(6) Redesignates Subdivision (5) text as Subdivision (6).

(c) Authorizes TFSC to waive the requirements of Subsection (a)(2) or (b)(2) for a period not to exceed 12 months and issue to an applicant a provisional license that expires at the end of that period.

(d) Requires an applicant to submit to a criminal background check before submitting an application for a license.

SECTION 26. Amends Section 651.303, Occupations Code, by adding Subsections (a-1) and (e-1), as follows:

(a-1) Authorizes a provisional license holder to work only:

(1) in a funeral establishment or commercial embalming facility licensed by TFSC; and

(2) under the direct and personal supervision of a funeral director or embalmer, as applicable.

(e-1) Authorizes TFSC by rule to prescribe case reporting requirements for provisional license holders. Requires TFSC to provide case report forms to be used by a provisional license holder.

SECTION 27. Amends the heading to Section 651.304, Occupations Code, to read as follows:

Sec. 651.304. EMPLOYMENT NOTIFICATION.

SECTION 28. Amends Section 651.304, Occupations Code, by amending Subsections (a) and (d) and adding Subsection (b), as follows:

(a) Requires a provisional license holder, on entering employment with a funeral establishment or commercial embalming facility, to immediately notify TFSC of the name of the establishment or facility where the provisional license holder will train, rather than requiring a provisional license holder, on entering employment with a funeral director or embalmer, to immediately notify TFSC of the name and place of business of the funeral director or embalmer under whom the provisional license holder will train.

Requires the funeral director or embalmer in charge to sign the notification, rather than requiring the funeral director or embalmer to sign the notification.

(b) Requires a provisional license holder to be employed by a funeral establishment or commercial embalming facility, as applicable, during the term of the provisional license. Requires TFSC, if a provisional license holder is not employed as required by this subsection, to cancel the provisional license.

(d) Requires the funeral director or embalmer in charge, if a provisional license holder leaves the employment of the funeral establishment or commercial embalming facility, rather than if a provisional license holder leaves the employment of a funeral director or embalmer, to prepare an affidavit showing the length of time the provisional license holder was employed and the number of cases handled while employed by the funeral establishment or facility, rather than employed by the funeral director or embalmer. Requires the funeral director or embalmer to file the original affidavit with TFSC as a matter of record, rather than requiring that the original affidavit be filed with TFSC and made a matter of record. Requires the funeral director or embalmer to provide a copy of the affidavit to the provisional license holder, rather than requires that a copy of the affidavit be furnished to the provisional license holder.

SECTION 29. Amends Subchapter G, Chapter 651, Occupations Code, by adding Section 651.3045, as follows:

Sec. 651.3045. TERMS OF PROVISIONAL LICENSE. (a) Provides that except as provided by Subsection (c), a provisional license is valid for 12 consecutive months and may be renewed only once for a period not to exceed an additional 12 consecutive months.

(b) Requires TFSC to cancel a provisional license if the license holder fails to complete the licensing requirements of the provisional license program within 24 consecutive months.

(c) Provides that, if a provisional license holder holds a provisional license issued under Section 651.302(c), the provisional license may be renewed for a period not to exceed 24 consecutive months and the provisional license holder is required to complete the licensing requirements of the provisional license program within 36 consecutive months.

SECTION 30. Amends Section 651.305, Occupations Code, by amending Subsections (c) and (d) and adding Subsections (d-1), (d-2), and (d-3), as follows:

(c) Requires TFSC, if a provisional license holder fails to renew the provisional license, rather than if the provisional license holder fails to timely pay the renewal fee, to:

(1)-(3) Makes no change to these divisions.

(d) Makes no change to this subsection.

(d-1) Creates this subsection from existing text. Authorizes the provisional license holder, if the license is canceled under Subsection (d) to apply for reinstatement not later than the date the license would have expired if the license had been renewed, rather than authorizes the provisional license holder, if the license is canceled under this subsection, to apply for reinstatement not later than 18 months after the date of cancellation.

(d-2) Provides that a reinstated license expires on the date the license would have expired if the license had been timely renewed.

(d-3) Prohibits a provisional license holder from working as a funeral director or embalmer while the license is suspended or canceled.

SECTION 31. Amends Subchapter G, Chapter 651, Occupations Code, by adding Section 651.3055, as follows:

Sec. 651.3055. REAPPLICATION FOR PROVISIONAL LICENSE. (a) Authorizes a person who does not complete the provisional license program within the prescribed period to reapply for a provisional license.

(b) Requires a person who reapplies for a provisional license to comply with the requirements of Section 651.303 (Provisional License Program). Prohibits casework performed under previous provisional license from being counted toward the requirements for the new provisional license. Authorizes TFSC to adopt rules to allow casework performed under a previous provisional license to transfer to a new provisional license if the license holder requests a hardship exemption.

(c) Authorizes a person to reapply for a provisional license under this section only once.

SECTION 32. Amends the heading to Subchapter H, Chapter 651, Occupations Code, to read as follows:

SUBCHAPTER H. LICENSE REQUIREMENTS: CEMETERY, FUNERAL, AND
COMMERCIAL EMBALMING ESTABLISHMENTS

SECTION 33. Amends Section 651.351, Occupations Code, by amending Subsections (d), (f), (g), and (h), and adding Subsection (h-1), as follows:

(d) Requires a funeral establishment to:

(1)-(3) Makes no change to these subdivisions;

(4) have access to vehicles, rather than rolling stock, consisting of at least one motor hearse;

(5) Makes no change to this subdivision;

(6) Makes a nonsubstantive change;

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

(8) conspicuously display the funeral establishment's license.

Deletes existing text from Subdivision (7) requiring a funeral establishment to include a display containing sufficient merchandise to permit reasonable selection, including at least, five adult caskets, two of which must be full-size and displayed in a casket showroom.

(f) Provides that other than the two full-size caskets, the merchandise displayed under Subsection (d)(7) may be displayed in a partial panel display or by video or brochure, online, or in any other manner. Deletes existing text requiring that the least expensive casket displayed under Subsection (d)(7) be a full-size casket displayed in the same general manner as the other full-size caskets are displayed. Deletes existing text authorizing that the three adult caskets that are not required to be full-size under Subsection (d)(7) may be displayed in a partial panel display or by video or brochure, online, or in any other manner.

(g) Authorizes TFSC to exempt a funeral establishment from the requirements of Subsection (d)(5) if the majority owner or designated agent of record of a funeral establishment submits a written petition to TFSC requesting an exemption and stating certain information as set forth. Makes nonsubstantive changes.

Deletes existing text authorizing TFSC to exempt a funeral establishment from the requirements of Subsection (d)(5) if TFSC determines that certain criteria in have been met.

(h) Requires the executive director of TFSC (executive director) to notify the petitioner of TFSC's decision on an exemption request under Subsection (g).

(h-1) Creates this subsection from existing text. Provides that an exemption under Subsection (g) remains in effect until the conditions required for the exemption are no longer met.

Deletes existing text providing that the exemption remain in effect until the establishment is no longer located within 50 miles of a facility owned by the exempt establishment or at which embalming services may be performed or an embalming service has been performed at the establishment.

SECTION 34. Amends the heading to Section 651.352, Occupations Code, as follows:

Sec. 651.352. COMMERCIAL EMBALMING ESTABLISHMENT LICENSE REQUIREMENTS.

SECTION 35. Amends Sections 651.352(a), (b), (c), and (e), Occupations Code, as follows:

(a) Defines "commercial embalming establishment," rather than "commercial embalmers establishment."

(b) Provides that an establishment that functions solely as a commercial embalming establishment is required to hold a commercial embalming establishment license and is required to comply with the requirements for a funeral establishment license under Section 651.351 (Funeral Establishment License Requirements) except for the requirements of Sections 651.351(d)(3) and (d)(7). Deletes existing text providing that an establishment that functions solely as a commercial embalmers establishment is required to hold a commercial embalmers establishment license but is not required to comply with the requirements for a funeral establishment license under Sections 651.351(d)(3), (d)(6), and (f).

(c) Changes a reference to a commercial embalmers establishment to commercial embalming establishment.

(e) Changes a reference to a commercial embalmers establishment to commercial embalming establishment.

SECTION 36. Amends Section 651.401, Occupations Code, as follows:

Sec. 651.401. New heading: REMOVAL OF DEAD HUMAN BODY. (a) Requires a funeral director to direct the pickup of a dead human body, rather than requires a funeral director or embalmer to direct and personally supervise the pickup of a dead human body on first call.

(b) Provides that a dead human body may be transferred without a funeral director directing the transfer at the direction of a justice of the peace or other law enforcement official.

Deletes existing Subdivisions (1)-(4) providing that a dead human body may be transferred without a funeral director personally making the transfer via certain means and in circumstances as set forth.

(c) Authorizes a funeral director to direct an unlicensed person, a provisional license holder, or an embalmer in the removal of a dead human body. Provides that a funeral director who directs the removal of a dead human body by an unlicensed person is strictly accountable for compliance with the requirements of this chapter. Requires a person, rather than unlicensed person, if an unlicensed person, a provisional license holder, or an embalmer inadvertently encounters a family member or other person with whom funeral arrangements are normally made, to restrict communication with the family member or other person to:

- (1) identifying the person's, rather than unlicensed person's, employer; and
- (2) Redesignates Subdivision (3) text as Subdivision (2).

Deletes existing Subdivision (2) requiring an unlicensed person to restrict communication with the family member or other person to arranging an appointment with the unlicensed person's employer for a family member or other person who indicates a desire to make funeral arrangements for the deceased.

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

SECTION 37. Amends Subchapter I, Chapter 651, Occupations Code, by adding Section 651.4031, as follows:

Sec. 651.4031. DESIGNATION OF EMBALMER IN CHARGE; EFFECT OF VIOLATION. (a) Requires a commercial embalming establishment to:

- (1) designate to TFSC an embalmer in charge; and
- (2) promptly notify TFSC of any change in that designation.

(b) Provides that the embalmer in charge is directly responsible for the embalming business of the commercial embalming establishment.

(c) Provides that the embalmer in charge is ultimately responsible for compliance with mortuary laws. Provides that the embalmer in charge may be charged with a violation of this chapter if a violation occurs in the commercial embalming establishment.

SECTION 38. Amends Section 651.404, Occupations Code, as follows:

Sec. 651.404. CONSUMER BROCHURE. Requires a funeral director or agent of the funeral establishment, when funeral services are discussed, to provide each prospective customer with a copy of the brochure prepared by TFSC under Section 651.201 (Public Interest Information). Deletes existing text requiring the funeral establishment to print additional copies of the brochure if TFSC is unable to provide the number of brochures needed by the funeral establishment.

SECTION 39. Amends Section 651.407(c), Occupations Code, as follows:

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

(1) TFSC; and

(2) the person who provided the consent, as provided by Section 711.002 (Disposition of Remains; Duty to Inter), Health and Safety Code.

Deletes existing Subdivision (3) requiring the funeral establishment to retain a copy of the written consent for at least two years and to make the records of the funeral establishment reasonably available for inspection by the next of kin of the deceased person.

SECTION 40. Amends the heading to Section 651.454, Occupations Code, to read as follows:

Sec. 651.454. UNETHICAL CONDUCT IN SOLICITING CUSTOMERS.

SECTION 41. Amends Section 651.454(a), Occupations Code, as follows:

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

(1) and (2) Makes no change to these subdivisions;

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

(4) Makes no change to this subdivision.

SECTION 42. Amends Sections 651.457 and 651.458, Occupations Code, as follows:

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

(1) Makes no change to this subdivision;

(2) Redesignates Subdivision (3) as Subdivision (2); or

(3) Redesignates Subdivision (3) as Subdivision (4).

Deletes existing Subdivision (2) text providing that a person violates this chapter if the person embalms or attempts to embalm a dead human body without proper authority, evidence of which includes making an incision on the body, raising a circulatory vessel of the body, or injecting a chemical into the body.

(b) Changes a reference to Subsection (a)(4) to Subsection (a)(3).

(c) Defines "embalms a body" for the purposes of this section.

Sec. 651.458. UNETHICAL CONDUCT BY FUNERAL ESTABLISHMENT. Provides that a person violates this chapter if the person makes a distinction in providing funeral information to a customer because of any affiliation of the customer or because the customer does or does not have a present need for the services or merchandise, rather than provides that a person violates this chapter if the person makes a distinction in providing funeral information to a customer regardless of any affiliation of the customer or whether the customer has a present need for the services or merchandise.

SECTION 43. Amends the heading to Section 651.459, Occupations Code, to read as follows:

Sec. 651.459. UNETHICAL CONDUCT IN PROVIDING FUNERAL SERVICES.

SECTION 44. Amends Section 651.459(a), Occupations Code, as follows:

(a) Provides that a person violates this chapter if the person:

(1) Makes no change to this subdivision;

(2) engages in fraudulent, deceptive, dishonest, wilful, unprofessional, or negligent conduct in providing embalming services or funeral services or merchandise to a customer that is likely to or does deceive, defraud, or otherwise injure the public;

Redesignates Subdivisions (4)-(7) as Subdivisions (3)-(6) and makes no further change.

Deletes existing text providing that a person violates this chapter if the person engages in dishonest conduct, wilful conduct, or negligence in the practice of embalming or funeral districting that is likely to or does deceive, defraud, or otherwise injure the public.

SECTION 45. Amends Section 651.461, Occupations Code, as follows:

Sec. 651.461. DEFENSE TO VIOLATION. Provides that a person licensed under this chapter does not violate this chapter by engaging in conduct regarding funeral arrangements under the direction of a person who:

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

(2) Makes no change to this subdivision.

SECTION 46. Transfers Section 651.508, Occupations Code, to Subchapter J, Chapter 651, Occupations Code, redesignates it as Section 651.462, Occupations Code, and amends it, as follows:

Sec. 651.462. ENFORCEMENT OF LAW REGULATING CREMATORIES. Provides that a person, rather than for purposes of this subchapter, regulated under this chapter that violates Chapter 716, Health and Safety Code, violates this chapter.

SECTION 47. Amends Section 651.501(a), Occupations Code, as follows:

(a) Authorizes TFSC, to issue a letter warning, assess an administrative penalty, revoke or suspend a license, place a holder on probation, or impose any combination of those penalties if TFSC determines that a person regulated under this chapter has violated this chapter or rule adopted under this chapter. Deletes exiting text authorizes TFSC, after a hearing as provided by this subchapter, to issue a reprimand, assess an administrative penalty, revoke, suspend or probate the suspension of a license or provisional license or impose any combination of those penalties for a violation of this chapter or a rule adopted under this chapter.

SECTION 48. Amends Subchapter K, Chapter 651, Occupations Code, by adding Section 651.5012, as follows:

Sec. 651.5012. CHARGING FUNERAL ESTABLISHMENT WITH VIOLATION. Authorizes TFSC, notwithstanding Section 651.501(b), in determining whether to charge a funeral establishment with a violation, to consider:

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

(2) the extent to which the owner or manager of the funeral establishment made any decision that led to the conduct that constitutes a violation.

SECTION 49. Amends the heading to Section 651.502, Occupations Code, as follows:

Sec. 651.502. LICENSE DENIAL.

SECTION 50. Amends Section 651.502, Occupations Code, by amending Subsections (a) and (b) and adding Subsection (a-1), as follows:

(a) Authorizes TFSC, after a hearing before TFSC, to refuse to issue or renew, rather than authorizes TFSC, before a hearing or waiver of a right to a hearing, to refuse to issue:

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

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

(A) and (B) Makes no change to these subdivision;

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

(a-1) Authorizes TFSC, after a hearing held under Subsection (a), to order that a license be issued or renewed on a probationary basis through execution of an agreed order.

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

SECTION 51. Amends the heading to Section 651.503, Occupations Code, to read as follows:

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

SECTION 52. Amends Section 651.503(a), Occupations Code, as follows:

(a) Requires TFSC to issue a written warning to a license holder if TFSC:

(1) Makes no change to this subdivision; and

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

SECTION 53. Amends Section 651.505, Occupations Code, by amending Subsection (a) and adding Subsection (d), as follows:

(a) Authorizes TFSC, if TFSC places a license holder on probation, rather than if TFSC places on probation a person whose license has been suspended, to impose conditions on the probation that are reasonable and related to the reason the license holder was placed on probation, rather than related to the violation for which the license was suspended.

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

SECTION 54. Amends Section 651.506(a), Occupations Code, to provide that a proceeding conducted by TFSC relating to an appeal of the denial of a license or provisional license, the suspension or revocation of a license, or the imposition of an administrative penalty under Subchapter L and judicial review of the proceeding are governed by Chapter 2001, Government Code, rather than provides that a proceeding conducted by TFSC relating to the denial of a license or provisional license, the suspension or revocation of a license, the issuance of a reprimand, or the imposition of an administrative penalty assessed after a hearing as provided by Section 651.551 and judicial review of the proceeding are governed by Chapter 2001, Government Code.

SECTION 55. Redesignates Section 651.506(f), Occupations Code, as Section 651.50601, Occupations Code, and amends, as follows:

Sec. 651.50601. DECISION BY COMMISSION. Requires TFSC to review the findings of fact, conclusions of law, and ruling of the administrative law judge in a proceeding under Section 651.506 (Disciplinary Proceedings; Hearing Proceedings) before making its final ruling in the proceeding. Deletes designation of Subsection (f).

SECTION 56. Amends Subchapter K, Chapter 651, Occupations Code, by adding Section 651.5029, as follows:

Sec. 651.5029. REPORT AND NOTICE OF VIOLATION AND PENALTY. (a) Requires TFSC, if, after examining a possible violation and the facts relating to that violation, TFSC determines that a violation has occurred, to issue a preliminary report stating:

- (1) the facts on which the determination is based;
- (2) that a sanction may be imposed; and
- (3) the types of sanctions that may be imposed for the violation.

(b) Requires TFSC, not later than the 10th day after the date the report is issued, to send to the person charged with the violation:

- (1) a copy of the report;
- (2) a statement of the right of the person to a hearing relating to the alleged violation;
- (3) a statement of the types of sanctions that may be imposed for the violation; and
- (4) a statement that the person may request an informal proceeding.

(c) Provides that, until a hearing has been held on the possible violation, the possible violation and the sanctions that may be imposed may be disclosed only to the person charged with the violation, unless that person has waived the right to a hearing or paid the amount TFSC.

SECTION 57. Amends Subchapter K, Chapter 651, Occupations Code, by adding Section 651.5065, as follows:

Sec. 651.5065. INFORMAL PROCEEDINGS. (a) Requires TFSC to by rule to adopt procedures governing:

- (1) informal disposition of a contested case under Section 2001.056 (Informal Disposition of Contested Case), Government Code; and

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

(b) Requires that the rules adopted under this section:

(1) provide the complainant and the license holder an opportunity to be heard; and

(2) require the presence of a representative of TFSC's legal staff or of the attorney general of the State of Texas to advise TFSC or TFSC's employees.

SECTION 58. Transfers Section 651.5515, Occupations Code, to Subchapter K, Chapter 651, Occupations Code, redesignates it as Section 651.5075, Occupations Code, and amends it, as follows:

Sec. 651.5075. New heading: SANCTIONS SCHEDULE. (a) Deletes existing text requiring TFSC by rule to adopt guidelines that define and summarize the violations that occur under this subchapter to assist TFSC in maintaining consistency in determining the amount of an administrative penalty assessed under Section 651.552. Deletes existing text requiring TFSF, using those guidelines and the summary, to establish and maintain a chart that lists certain violations and sanctions. Requires TFSC by rule to adopt a sanctions schedule that lists:

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

(2) the types of sanctions, including administrative penalties, that may be imposed for those violations, rather than the penalty amount assessed for those violations; and

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

(b) Requires TFSC to obtain business and consumer input, rather than consider using focus groups to obtain business and consumer input, to match appropriate sanction, rather than penalties, to violations before proposing the rules under this section.

(c) Requires TFSC to post the schedule, rather than guidelines, on TFSC's Internet site.

SECTION 59. Amends Section 651.552(b), Occupations Code, as follows:

(b) Requires TFSC, in determining the amount of the penalty, to base its decision on:

(1)-(5) Makes no change to these subdivisions;

(6) the sanctions schedule, rather than guidelines, adopted under Section 651.5075, rather than Section 651.5515; and

(7) Makes no change to this subdivision.

SECTION 60. Amends Section 651.602, Occupations Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Provides that a person commits an offense if the person:

(1) participates in or influences the management or operation of a funeral establishment;

(2) has held a license that was revoked, suspended, or canceled by TFSC; and

(3) does not hold a license issues by TFSC.

(c) Creates this subsection from existing text. Provides that an offense under this section is a Class B misdemeanor.

SECTION 61. Amends Section 651.652, Occupations Code, to provide that this subchapter applies only to a crematory that sells goods or services related to the final disposition, rather than burial and final disposition, of the body.

SECTION 62. Repealer: Section 651.257 (Foreign Students; Certificate of Merit), Occupations Code.

Repealer: Section 651.2595 (Provisional License) , Occupations Code.

Repealer: Section 651.264 (Renewal of Expired License by Out-Of-State Practitioner), Occupations Code.

Repealer: Sections 651.303(b) (requiring TFSC by rule to define the terms of employment of provisional license holder) and (c) (requiring that the term of the provisional license program be at least 12 consecutive months but not more than 24 consecutive months), Occupations Code.

Repealer: Section 651.304(e) (requiring TFSC by rule to prescribe reporting requirements for provisional license holders), Occupations Code.

Repealer: Sections 651.305(e) (authorizing a provisional license to be renewed after the second anniversary of the date of its insurance only if the persons requests and receives from TFSC an extension based on hardship) and (f) (providing that a provisional license that has been canceled or suspended or has lapsed for a period of at least five years may be reinstated only if the applicant passes the written embalming or funeral directing examination), Occupations Code.

Repealer: Section 651.354(d) (providing that this section does not apply to a perpetual care cemetery), Occupations Code.

Repealer: Section 651.355 (Perpetual Care Cemetery Registration), Occupations Code.

Repealer: Sections 651.502(c) (authorizes TFSC and the person to whom TFSC refuses to issue a license to agree to the issuances of a probationary license under certain conditions) and (d) (relating to the requirements for a person to be issued a license or granted a hearing if the a person who has a criminal record), Occupations Code.

Repealer: Section 651.5026 (Temporary License Suspension or Restriction; Disciplinary Panel), Occupations Code.

Repealer: Section 651.504 (Reprimand), Occupations Code.

Repealer: Sections 651.506(g) (requiring TFSC to inform each interested person, including a person filing the complaint, of the right to obtain at that person's cost a tape or transcript of a hearing or proceeding under this section) and (h) (relating to a member of TFSC participating in a hearing), Occupations Code.

Repealer: Section 651.5061 (Waiver of Hearing by Funeral or Crematory Establishment), Occupations Code.

Repealer: Section 651.559 (Enforcement of Law Regulating Crematories), Occupations Code.

SECTION 63. Provides that Section 651.051(a)(2), Occupations Code, as amended by this Act, applies only to a member of TFSC appointed on or after the effective date of this Act. Authorizes a member appointed before the effective date of this Act to continue to serve until the expiration of the member's term.

SECTION 64. Provides that Sections 651.253 and 651.258, Occupations Code, as amended by this Act, apply only to a person who applies for a funeral director's license or embalmer's license on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 65. Provides that Section 651.2661, Occupations Code, as transferred, redesignated, and amended by this Act, applies only to a person who applies for reinstatement of a license on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 66. Provides that Section 651.2662, Occupations Code, as transferred, redesignated, and amended by this Act, applies only to a person who applies for reinstatement of a license on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 67. Provides that Section 651.267, Occupations Code, as amended by this Act, applies only to a person who applies for reissuance of a license on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 68. Provides that Section 651.502, Occupations Code, as amended by this Act, applies only to a person who applies for the issuance or renewal of a license on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 69. Provides that Section 651.505, Occupations Code, as amended by this Act, applies only to a person placed on probation on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 70. Provides that Section 651.506, Occupations Code, as amended by this Act, and Section 651.50601, Occupations Code, as redesignated and amended by this Act, apply only to a proceeding initiated on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 71. Provides that Section 651.5029, Occupations Code, as added by this Act, applies only to a violation that occurs on or after the effective date of this Act. Makes application of this Act prospective.

SECTION 72. Effective date: September 1, 2015.