

BILL ANALYSIS

Senate Research Center

H.B. 1292
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Business & Commerce
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Engrossed

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

Interested parties contend that the law governing the funeral industry needs to take into account the evolution of the industry and more accurately reflect current practices. H.B. 1292 seeks to update the applicable law so that it reflects the existing state of the Texas Funeral Service Commission and the businesses the commission regulates.

H.B. 1292 amends current law relating to the Texas Funeral Service Commission and authorizes fees.

RULEMAKING AUTHORITY

Rulemaking authority is expressly granted to the Texas Funeral Service Commission (TFSC) in SECTION 15 (Section 651.253, Occupations Code) and SECTION 49 (Section 651.5065, Occupations Code) of this bill.

Rulemaking authority previously granted to TFSC is modified in SECTION 7 (Sections 651.157 and 651.158, Occupations Code), SECTION 14 (Section 651.2525, Occupations Code), SECTION 21 (Section 651.266, Occupations Code), and SECTION 50 (Section 651.5075, 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, with the advice and consent of the senate as follows:

- (1) one member who is, rather than two members who are, licensed as both an embalmer and a funeral director for at least five years preceding appointment to TFSC;
- (2) one member who is licensed as a funeral director and is a registered cemetery owner or operator, rather than one member who is a registered cemetery owner or operator;
- (3) one member who is licensed as a funeral director and is a licensed crematory establishment operator; and
- (4) creates this subdivision from existing text and makes no further changes to this subdivision.

SECTION 2. Amends Section 651.055(c), Occupations Code, to provide that it is a ground for removal from TFSC that a member violates a prohibition established by Section 651.053 (Membership and Employee Restrictions), rather than Sections 651.053(a) through (c) (relating to membership and employee restrictions) or 651.506(h) (relating to prohibited communication between a certain TFSC member and a party to a certain proceeding).

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 POWERS AND DUTIES.

SECTION 5. Redesignates Section 651.151(c), Occupations Code, as Section 651.1511, Occupations Code, and amends it, as follows:

Sec. 651.1511. New heading: COMMITTEES. Deletes existing designation of Subsection (c) and makes no further changes to this section.

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

Sec. 651.154. FEES. (a) Includes renewal fee, later renewal penalty, and replacement license fee among the fees TFSC is required to set.

(b) Requires TFSC to set certain fees, including the provisional license application fee, rather than the provisional license fee.

(c) Requires TFSC to set certain fees in amounts reasonable and necessary to administer the continuing education program under this chapter, rather than prohibits 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 a crematory or funeral establishment to 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 licensed cemetery from establishments required to be inspected in a certain manner.

(b) Deletes a cemetery from establishments required to be inspected by TFSC. Makes conforming changes.

(c) Requires a report of each inspection made under this section to be retained in the crematory's or funeral establishment's licensing file, rather than to be filed with TFSC.

(d) Deletes cemetery from certain establishments for which TSFC is required to establish rules for procedures of inspection. Makes conforming and nonsubstantive changes.

(e) Deletes interment from activities on a premise that are required to be open at all times to inspection for any violation of certain chapters of the Health and Safety Code.

(f) Deletes a cemetery from establishments inspected by TFSC agent under this subsection. Makes conforming and nonsubstantive changes.

Sec. 651.1571. New heading: INSPECTION REQUIREMENTS FOR CERTAIN CEMETERIES. (a) Prohibits a cemetery licensed by TFSC from being inspected unless certain conditions are met, rather than provides that this section and Section 651.157 do not apply to perpetual care cemeteries and prohibiting, except as provided by Section 651.157(b), a cemetery from being inspected unless certain conditions are met. Deletes existing designation of Subsection (b) and redesignates paragraph as subdivisions accordingly.

(b) Creates this subsection from existing text. Makes nonsubstantive changes.

Sec. 651.158. INSPECTION OF CERTAIN FACILITIES. (a) Changes references to the Texas Department of Health (TDH) to the Department of State Health Services (DSHS).

(b) Makes no changes to this subsection.

SECTION 8. Amends Sections 651.160(a) and (b), Occupations Code, to refer to DSHS, rather than TDH.

SECTION 9. Transfers Section 651.004, Occupations Code, to Subchapter D, Chapter 651, Occupations Code, redesignates it as Section 651.168, Occupations Code, and makes no further changes to this section.

SECTION 10. Amends Section 651.201, Occupations Code, by adding Subsection (c), to authorize 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.

SECTION 11. Amends Subchapter E, Chapter 651, Occupations Code, by adding Section 651.2015, as follows:

Sec. 651.2015. INTERNET WEBSITES. Authorizes TFSC to allow a funeral establishment that maintains an Internet website to link to TFSC's Internet website.

SECTION 12. Amends Section 651.203, Occupations Code, as follows:

Sec. 651.203. RECORD OF COMPLAINTS. (a) Requires TFSC to maintain a record, rather than file, on each written complaint filed with TFSC. Makes conforming changes.

(b) Makes a conforming change.

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), rather than authorizes TFSC to require an applicant to appear before at least one member of TFSC for approval of the person's application. Deletes existing text providing that the approval is subject to review by the entire TFSC.

(c) Deletes existing Subsection (c) designation and text relating to TFSC keeping a permanent, alphabetical record of each license application and the action taken on the application and the record indicating 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. (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 in a certain manner.

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

Sec. 651.253. **GENERAL LICENSE REQUIREMENTS.** (a) Includes written examinations described by Section 651.254 (License Examinations; Results) among examinations an applicant is required to successfully complete to be eligible for a funeral director's license or an embalmer's license. Makes nonsubstantive changes.

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

(c) Authorizes TFSC, notwithstanding Subsection (a)(3) (relating to certain education requirements for a license applicant), 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 certain examination material.

(b) Requires an individual to receive a grade of at least 75 percent to pass the examination. Deletes existing text of Section 651.254.

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 an examination on certain topics. Redesignates existing paragraphs as subdivisions. Deletes existing Subdivision (2) (relating to an examination on certain legal matters).

Sec. 651.256. New heading: **EXAMINATION REQUIRED FOR EMBALMER'S LICENSE.** Requires TFSC to administer or arrange for the administration of an examination on certain topics. Redesignates Paragraphs (A) through (G) as Subdivisions (1) through (7), respectively. Deletes existing Subdivision (2) and text relating to a written examination developed by TFSC or developed for TFSC by contract on certain laws and rules.

Sec. 651.258. **LICENSE ISSUANCE.** Provides that a license issued by TFSC authorizes the license holder to practice embalming, funeral directing, or both, rather than provides that the license authorizes the license holder to practice embalming, funeral directing or both.

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 certain materials, including a sworn statement that the license under which the applicant practiced as a funeral director or embalmer in the state, country, or territory from which the applicant moved,

was, at the time the applicant left, in effect, and documentation that the applicant has graduated from an accredited college of mortuary science. Makes nonsubstantive changes.

(c) Makes no changes to this subsection.

(d) Deletes existing Subsection (d) relating to requiring the applicant to make a certain statement. Redesignates existing Subsection (e) as Subsection (d). Requires an applicant to submit to a criminal background check before submitting a license application, rather than requires TFSC to conduct a criminal background check on each applicant.

(e) Redesignates existing Subsection (f) as Subsection (e). Requires an applicant for a license under this section to provide proof that the applicant has practiced under the license for a certain amount of time depending on the license requirements of the state, country, or territory that issued the license. Deletes existing text requiring the applicant to provide proof that the license is in good standing. Makes nonsubstantive changes.

(f) Requires an applicant under this section to successfully complete the written examination described by Section 651.254. Deletes text relating to certain applicant requirements.

(g) Requires the applicant, on approval of the application, to pay a license fee in an amount set by TFSC, rather than requires 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, as follows:

(a) Authorizes a license holder, if a license issued under this chapter is lost or destroyed, to apply to TFSC for a replacement, rather than duplicate, license.

(c) Makes conforming changes.

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, rather than the holder's 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 Section 651.265 (Renewal for Certain Retired Applicants; Inactive Status) with Section 651.265(b) (relating to renewal of license of a certain retired license holder).

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

Sec. 651.2661. RENEWAL OR REINSTATEMENT OF LICENSE. (a) through (c) Makes no changes 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 meeting certain requirements, including retaking and passing the examination under Section 651.254, rather than the applicable examination.

(e) Creates an exception if both licenses are in good standing.

(f) Makes no changes 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 the license by meeting certain requirements, rather than authorizes a person whose license has been suspended to renew the license by meeting certain conditions, including paying any penalty assessed by TFSC, completing any continuing education required under Section 651.266 and passing with a score of at least 75 percent the examination under Section 651.254. Makes nonsubstantive changes.

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

(c) Changes a reference to a hearings officer to an administrative law judge.

(d) Authorizes a license that has been revoked to be reissued, rather than reinstated, only after the applicant meets certain requirements, including retaking and passing the examination under Section 651.254, rather than the applicable examination, and paying any penalty assessed by TFSC. Makes nonsubstantive changes.

SECTION 25. 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 26. 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) through (3) makes no changes to these subdivisions;

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

(5) makes no changes to this subdivision;

(6) makes nonsubstantive changes to this subdivision;

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

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

(f) Authorizes the merchandise displayed under Subsection (d)(7), other than the two full-sized caskets, to be displayed in a certain manner, rather than requires the least expensive

casket displayed under Subsection (d)(7) to be a full-size casket displayed in the same general manner as the other full-size caskets are displayed. Deletes existing text requiring the three adult caskets that are not required to be full-sized under Subsection (d)(7) to be displayed in a certain manner.

(g) Deletes existing designation of Subdivision (1) and redesignates Paragraphs (A) through (C) as Subdivisions (1) through (3), respectively. Deletes existing Subdivision (2) designation and text relating to TFSC determining that certain criteria have been met.

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

(h-1) Provides that an exemption under Subsection (g) remains in effect until the conditions required for the exemption are no longer met, rather than provides that the exemption remains in effect until certain conditions are met.

SECTION 27. Amends the heading to Section 651.352, Occupations Code, to read as follows:

Sec. 651.352. COMMERCIAL EMBALMING ESTABLISHMENT LICENSE REQUIREMENTS.

SECTION 28. Amends Sections 651.352(a), (b), (c), and (e), Occupations Code, as follows:

(a) Defines "commercial embalming establishment" and deletes existing definition of "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 under Section 651.351 (Funeral Establishment License Requirements) except for the requirements of Sections 651.351(d)(3) (relating to facilities in which funeral services may be conducted) and (7) (relating to inclusion of a display containing certain merchandise), rather than provides 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) (relating to inclusion of facilities necessary to comply with sanitary codes), and (f) (relating to display of a certain casket).

(c) Authorizes a commercial embalming, rather than embalmer, establishment to employ an embalmer only if the embalmer is licensed under this chapter.

(e) Makes a conforming change.

SECTION 29. 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) Authorizes a dead human body to be transferred without a funeral director directing the transfer at the direction of a justice of the peace or other law enforcement official, rather than without a funeral director personally making the transfer from certain locations and in certain circumstances.

(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 the person, if an unlicensed person, a provisional license holder or an embalmer inadvertently encounters a certain individual, rather than requires the unlicensed person, if an unlicensed person inadvertently encounters a certain individual, to restrict the communication with the certain individual to certain topics, excluding 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. Makes a conforming change. Redesignates existing Subdivision (3) as Subdivision (2).

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

SECTION 30. 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 designate an embalmer in charge and 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. Authorizes the embalmer in charge to be charged with a violation of this chapter if a violation occurs in the commercial embalming establishment.

SECTION 31. Amends Section 651.404, Occupations Code, to delete 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 32. Amends Section 651.407(c), Occupations Code, as follows:

(c) Includes provisions by Section 711.002 (Disposition of Remains; Duty to Inter), Health and Safety Code, under which the person provides the consent for inspections. Deletes the next of kin of the deceased person from the list of those who may conduct an inspection.

SECTION 33. Amends the heading to Section 651.454, Occupations Code, to read as follows:

Sec. 651.454. UNETHICAL CONDUCT IN SOLICITING CUSTOMERS.

SECTION 34. Amends Section 651.454(a), Occupations Code, to provide that a person violates this chapter if the person, in arranging for funeral services or merchandise, fails to explain to a prospective customer that a purchase agreement, rather than contractual agreement, for funeral services or merchandise may not be entered into before a retail price list is provided to the prospective customer.

SECTION 35. Amends Sections 651.457 and 651.458, Occupations Code, as follows:

Sec. 651.457. UNETHICAL CONDUCT REGARDING EMBALMING. (a) Deletes existing Subdivision (2) 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. Deletes existing Subdivision (3) designation and redesignates Subdivisions (3) and (4) as Subdivisions (2) and (3), respectively.

(b) Makes a conforming change

(c) Defines "embalms a body."

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

Sec. 651.459. UNETHICAL CONDUCT IN PROVIDING FUNERAL SERVICES.

SECTION 37. Amends Sections 651.459(a) and (c), Occupations Code, as follows:

(a) Provides that a person violates this chapter if a person 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, rather than engages in fraudulent, unprofessional, or deceptive conduct in providing funeral services or merchandise to a customer or engages in dishonest conduct, wilful conduct, or negligence in the practice of embalming or funeral directing that is likely to or does deceive, defraud, or otherwise injure the public. Makes nonsubstantive changes.

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

SECTION 38. Amends Section 651.461, Occupations Code, to provide 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 represents in writing, rather than only represents, to the license holder that the person is authorized to make funeral arrangements for the deceased.

SECTION 39. Transfers Section 651.508, Occupations Code, to Subchapter J, Chapter 651, Occupations Code, redesignates it as Section 651.462, Occupations Code, as amends it, as follows:

Sec. 651.462. ENFORCEMENT OF LAW REGULATING CREMATORIES. Deletes existing text making the section applicable only for purposes of this section.

SECTION 40. Amends Section 651.501(a), Occupations Code, to authorize TFSC to issue a letter of warning, assess an administrative penalty, revoke or suspend a license, place a license 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 a rule adopted under this chapter, rather than 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 41. Amends the heading to Section 651.502, Occupations Code, to read as follows:

Sec. 651.502. LICENSE DENIAL.

SECTION 42. 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 certain licenses, rather than authorizes TFSC, before a hearing or waiver of a right to a hearing, to refuse to issue certain licenses.

(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) Authorizes a person who is refused the issuance or renewal of a license under Subsection (a), rather than a person to whom TFSC refuses to issue a license under Subsection (a), to appeal the decision by taking certain action.

SECTION 43. 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 certain information.

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

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

SECTION 44. Amends the heading to Section 651.503, Occupations Code, to read as follows:

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

SECTION 45. Amend Section 651.503(a), Occupations Code, to delete existing text requiring TFSC to issue a written warning to a license holder if TFSC does not issue a reprimand or assess an administrative penalty against the license holder.

SECTION 46. 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, to impose conditions on the probation that are reasonable and related to the reason the license holder was placed on probation, rather than authorizes TFSC, 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 violation for which the license was suspended.

(d) Authorizes TFSC to suspend or 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 (Administrative Procedure), Government Code, not later than the 30th day after the date of the suspension or revocation.

SECTION 47. 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 (Administrative Penalties) and judicial review of the proceeding, rather than 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 (Assessment of Administrative Penalty) and judicial review of the proceeding, are governed by Chapter 2001, Government Code.

SECTION 48. Redesignates Section 651.506(f), Occupations Code, as Section 651.50601, Occupations Code, and amends it, as follows:

Sec. 651.50601. New heading: 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.

SECTION 49. Amends Subchapter K, Chapter 651, Occupations Code, by adding Section 651.5065, as follows:

Sec. 651.5065. INFORMAL PROCEEDINGS (a) Requires TFSC, by rule, to adopt procedures governing certain informal dispositions and proceedings.

(b) Requires rules adopted under this section to meet certain criteria and requirements.

SECTION 50. 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) Requires TFSC, by rule, to adopt a sanctions schedule that lists certain information, rather than 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 TFSC, using these guidelines and the summary, to establish and maintain a chart that lists certain information.

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

(c) Makes conforming and nonsubstantive changes.

SECTION 51. Amends Section 651.552(b), Occupations Code, to require TFSC, in determining the amount of the penalty, to base its decision on certain factors, including the sanctions schedule adopted under Section 651.5075, rather than guidelines adopted under Section 651.5515.

SECTION 52. Amends Section 651.602(a), Occupations Code, to provide that a person commits an offense of the person violates Section 651.401, rather than makes a first call in a manner than violates Section 651.401.

SECTION 53. Amends Section 651.652, Occupations Code, to delete existing text referencing a crematory that sells goods or services related to the burial to which this subchapter applies.

SECTION 54. 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: Section 614.354(d) (relating to this section not applying to a perpetual care cemetery), Occupations Code.

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

Repealers: Sections 651.502(c) (relating to an agreement between TFSC and a person who is refused a license to issue a probationary license) and (d) (relating to a hearing on whether a criminal conviction prevents issuance of a license), Occupations Code.

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

Repealer: Section 651.504 (Reprimand), Occupations Code.

Repealers: Sections 651.506(g) (relating to TFSC informing each interested person of the right to obtain a tape or transcript of a hearing or proceeding) and (h) (relating to prohibiting certain individuals from communicating with a party to the proceeding unless certain conditions are met), 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 55. Makes application of Section 651.051(a), Occupations Code, as amended by this Act, prospective.

SECTION 56. Makes application of Sections 651.253 and 651.259, Occupations Code, as amended by this Act, prospective.

SECTION 57. 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. Provides that a person who applies for renewal of a license under former Section 651.165, Occupations Code, before the effective date of this Act is governed by the law in effect on the date the person applied for renewal, and the former law is continued in effect for that purpose.

SECTION 58. 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. Provides that a person who applies for renewal of a license under former Section 651.1655, Occupations Code, before the effective date of this Act is governed by the law in effect on the date the person applied for renewal, and the former law is continued in effect for that purpose.

SECTION 59. Makes application of Section 651.267, Occupations Code, as amended by this Act, prospective.

SECTION 60. Makes application of Section 651.502, Occupations Code, as amended by this Act, prospective.

SECTION 61. Makes application of Section 651.5029, Occupations Code, as added by this Act, prospective.

SECTION 62. Makes application of Section 651.505, Occupations Code, as amended by this Act, prospective.

SECTION 63. 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. Provides that a proceeding initiated before the effective date of this Act is governed by the law in effect on the date the proceeding was initiated, and the former law is continued in effect for that purpose.

SECTION 64. Effective date: September 1, 2017.