

CHAPTER 995

H.B. No. 466

AN ACT

relating to the operation of the Texas Funeral Service Commission.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Subdivision 1, Subsection A, Section 1, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended to read as follows:

1. A "funeral director," as that term is used herein, is a person who for compensation engages in or conducts, or who holds himself out as being engaged, for compensation, in preparing, other than by embalming, for the burial or disposition of dead human bodies[, and maintaining or operating a funeral establishment for the preparation and disposition, or for the care of dead human bodies].

SECTION 2. Subsections D, E, F, G, H, and M, Section 1, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), are amended to read as follows:

D. The term "embalmer" as herein used is a person who for compensation disinfects or preserves a dead human body, entire or in part by the use of chemical substances, fluids, or gases in the body, or by the introduction of the same into the body by vascular or hypodermic injection, or by direct application into the organs or cavities, or by any other method intended

to disinfect or preserve a dead human body, or restore body tissues and structures. The placing of any such chemicals or substances on or in a dead human body by any person who is not a licensed embalmer shall be deemed a violation of this Act, provided that this shall not apply to a *provisional licensee* [~~registered apprentice~~] working under the supervision of a licensed embalmer. All persons who are engaged in the business of embalming or who profess to be engaged in such business, or hold themselves out to the public as embalmers, shall be licensed embalmers.

E. The term "*provisional licensee*" [~~apprentice~~] as herein used is a person engaged in learning the practice of funeral directing and/or embalming under the instruction, direction, and personal supervision of a duly licensed funeral director and/or embalmer of and in the State of Texas in accordance with the provisions of this Act, and having been duly *issued a provisional license* [~~registered as such~~] by the commission prior thereto.

F. The term "*provisional license program*" or "*program*" [~~apprenticeship~~] as used herein shall be construed as diligent attention to assigned duties and other matters performed in a licensed funeral establishment in this state. The commission by rule shall define the terms of employment of a *provisional licensee* [~~an apprentice~~], which must include service by the *provisional licensee* [~~apprentice~~] under actual working conditions and under the personal supervision of a licensed funeral director and/or embalmer.

G. The term "funeral establishment" as herein used is a place of business used in the care and preparation for burial or transportation of dead human bodies, or any place where one or more persons, either as sole owner, in co-partnership, or through corporate status, represent themselves to be engaged in the business of embalming and/or funeral directing, or *are* [~~as~~] so engaged. Such funeral directing and embalming shall be performed only by a *licensed funeral director, a licensed embalmer, a provisional licensee, or a qualified mortuary student* under the supervision and direction of a licensed funeral director and/or embalmer.

H. The term "due notice" as herein used shall mean published notice of the time and place of regular meetings of the commission. Notice of time, place, and purpose of any meeting of the commission filed with the Texas Register[,] at least seven (7) days prior thereto[,] shall be adequate notice for any regular meeting, including the giving of examinations[; ~~however, a notice of a meeting wherein a change in the rules and regulations of the commission is to be considered, shall be given by written notice in the Texas Register at least thirty (30) days in advance of any hearing thereon.~~].

M. "Solicitation" means *any* [~~a~~] direct or indirect contact by a *licensed funeral director, a licensed embalmer, or an employee, agent, or representative of a licensed funeral establishment or any other entity with a person near death* or the family, next of kin, or *person responsible for making funeral arrangements for* [~~one who has custody of~~] a person who is deceased or near death *if the contact is not initiated by the person near death or the family, next of kin, or person responsible for making funeral arrangements for a person who is deceased or near death and the contact is for the purpose of securing the right to provide funeral services or merchandise or is in a situation that might influence the person contacted to choose a particular funeral establishment* [~~for the deceased or the person near death~~]. Provided, however, that the term "solicitation" shall not be deemed to include, *except in the case of contact with a person near death or the person responsible for making funeral arrangements for a person near death*, any attempt to secure funeral business pursuant to a permit issued under the provisions of Chapter 512, Acts of the 54th Legislature, Regular Session, 1955, as amended (Article 548b, Vernon's Texas Civil Statutes), or to include any method of advertising by publication or broadcasting.

SECTION 3. Subdivision (5), Subsection A, Section 2, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended to read as follows:

(5) *Two commissioners* [~~A commissioner~~] may [~~not~~] participate in any *informal conference* [~~commission proceeding~~] relating to a case that awaits a hearing as described by Section 6C of this Act. *One of the two commissioners must be a licensed funeral director or embalmer and one must be a public member of the commission.*

SECTION 4. Section 2, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended by amending Subsections H and L and adding Subsections S and T to read as follows:

H. The commission may employ such inspectors, [and] clerical and technical assistants, legal counsel *other than the attorney general*, and [including] an Executive Director, as may be determined by it to be necessary to carry out the provisions of this Act, and the terms, conditions and expenses of such employment shall be determined by the commission.

L. The commission *may issue, or delegate to the executive director the power to issue, subpoenas and subpoenas duces tecum. A subpoena or subpoena duces tecum issued under this subsection must be served either by personal service or by certified mail, return receipt requested* [~~shall prescribe the form of the official application blank. It shall notify the proprietor of each licensed funeral establishment in this state that any person who seeks employment as a funeral director or embalmer must fill in this application blank, and that the person receiving the application must mail a copy of the official form to the commission. The commission shall inform the prospective employer of the status of the applicant's license to engage in the activity he proposes.~~].

S. *The commission may appoint committees from the commission to consider and make recommendations on matters referred to them by the commission.*

T. *The commission may institute an action in its own name to enjoin the violation of this Act. An action under this subsection is in addition to any other action, proceeding, or remedy authorized by law. In an action under this subsection, the commission shall be represented by the attorney general, a county or district attorney, or counsel designated and authorized by the commission.*

SECTION 5. Section 3, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended by amending Subsections A, B, C, D, E, and H and adding Subsection J to read as follows:

A. The commission is hereby authorized and empowered and it shall be its duty to prescribe and maintain a standard of proficiency, *professionalism*, [~~character~~] and qualifications of those engaged or who may engage in the practice of a funeral director or embalmer and to determine the qualifications necessary to enable any person to lawfully practice as a funeral director, to embalm dead human bodies, and to collect the fees therefor. The commission shall examine all applicants for funeral directors' and embalmers' licenses and for *provisional* [~~apprenticeship~~] licenses and shall issue the proper license to all persons qualified and who meet *the* requirements herein prescribed.

- B. (1) To be eligible for a license to practice funeral directing, an applicant must:
- (a) be 18 years of age or older;
 - (b) have graduated from an accredited high school or passed an examination prescribed by the Central Education Agency;
 - (c) have graduated from an accredited school or college of mortuary science;
 - (d) have served as a *provisional licensee* [~~an apprentice~~] for not less than one year under the personal supervision and instruction of a licensed funeral director; and
 - (e) successfully complete written examinations as described by Subdivision (2) of this subsection.

(2) The commission shall administer or arrange for the administration of:

- (a) a written professionally prepared examination on the subjects of:
 - (i) the art and technique of funeral directing;
 - (ii) the signs of death;
 - (iii) the manner by which death may be determined;
 - (iv) sanitation;
 - (v) hygiene;
 - (vi) mortuary management and mortuary law;
 - (vii) business and professional ethics; and
 - (viii) other subjects that may be taught in a recognized school or college of mortuary science; and

(b) a written examination developed by the commission or developed for the commission by contract on:

- (i) laws applicable to vital statistics pertaining to dead human bodies; and
- (ii) local and state rules and laws relating to the preparation, transportation, care, and disposition of dead human bodies.

(3) Not later than the 30th day after the date on which a funeral director licensing examination is administered under this Act, the commission shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the commission shall notify examinees of the results of the examination not later than the 14th day after the date on which the commission receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the commission shall notify the examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails a licensing examination administered under this Act, the commission shall furnish the person with an analysis of the person's performance on the examination.

C. (1) To be eligible for a license to practice embalming, an applicant must:

- (a) be 18 years of age or older;
- (b) have graduated from an accredited high school or passed an examination prescribed by the Central Education Agency;
- (c) have graduated from an accredited school or college of mortuary science;
- (d) have served as a *provisional licensee* [~~an apprentice~~] for one year under the personal supervision of a licensed embalmer; and
- (e) successfully complete written examinations as described by Subdivision (2) of this subsection.

(2) The commission shall administer or arrange for the administration of:

- (a) a written professionally prepared examination on the subjects of:
 - (i) the anatomy of the human body;
 - (ii) the cavities of the human body;
 - (iii) the arterial and venous system of the human body;
 - (iv) blood and discoloration;
 - (v) bacteriology and hygiene;
 - (vi) pathology;
 - (vii) chemistry and embalming;
 - (viii) arterial and cavity embalming;
 - (ix) restorative art;
 - (x) disinfecting;
 - (xi) embalming special cases;
 - (xii) contagious and infectious diseases;
 - (xiii) mortuary management;
 - (xiv) care, preservation, transportation, and disposition of dead human bodies;
 - (xv) sanitary science; and
 - (xvi) other subjects as may be taught in a recognized school or college of mortuary science; and

(b) a written examination developed by the commission or developed for the commission by contract on:

- (i) laws applicable to vital statistics pertaining to dead human bodies; and
- (ii) local and state rules and laws relating to the care and disposition of dead human bodies.

(3) Not later than the 30th day after the date on which an embalmer licensing examination is administered under this Act, the commission shall notify each examinee of the results of the examination. However, if an examination is graded or reviewed by a national testing service, the commission shall notify examinees of the results of the examination not later than the 14th day after the date on which the commission receives the results from the testing service. If the notice of examination results graded or reviewed by a national testing service will be delayed for longer than 90 days after the examination date, the commission shall notify the examinee of the reason for the delay before the 90th day. If requested in writing by a person who fails a licensing examination administered under this Act, the commission shall furnish the person with an analysis of the person's performance on the examination.

D. It shall be the duty of the commission to prescribe and supervise the course of instruction received by a *provisional licensee* [~~an apprentice~~] while *participating in a provisional license program* [~~-serving his or her apprenticeship~~], consistent with the following requirements [~~to establish such an apprenticeship registration procedure~~]:

1. *Provisional license* [~~Apprenticeship~~] for embalmer: A license to practice the science of embalming shall not be issued unless and until the applicant therefor has served a *provisional license program* [~~an apprenticeship period~~] of not less than twelve (12) consecutive months under the personal supervision and instruction of a licensed embalmer and has successfully completed all requirements of *the program* [~~apprenticeship~~]. The only exception to this requirement shall be in the case of an applicant under reciprocity.

(a) Any person, eighteen (18) years of age or more, who desires to practice the science of embalming in this state, files application therefor, meets the requirements of the law and this commission, and possesses such qualification to enter into the *provisional license program* [~~apprenticeship training~~], may be registered as a *provisional licensee* [~~an apprentice~~]. A *provisional license program* for [~~Apprenticeship for a license to practice the science of~~] embalming must be served by the person after graduation from a school or college of mortuary science. An applicant shall pay a *license* [~~registration~~] fee at the time he requests to *enter the program* [~~such apprenticeship registration~~].

(a-1) An applicant for a license to practice [~~the science of~~] embalming *must make* [~~who attains~~] a grade of 75 percent [70%] or higher on the written examination used [~~given~~] by the commission. *The commission may require an applicant to appear before at least one member of the commission for approval of the person's application. The approval is subject to review by the entire commission. An applicant who has not entered the provisional license program before the second anniversary of the date the applicant took the examination must pass the examination again before receiving a provisional license* [~~upon payment of a registration fee shall be registered as an apprentice within six (6) months of such examination~~].

(b) Each *provisional* [~~registered apprentice~~] embalmer shall be issued a *provisional license* [~~certificate of apprenticeship or other means of apprenticeship identification~~] by the commission for a *provisional license program* to be served in the State of Texas. During the *course of the program* [~~apprenticeship~~], a *provisional licensee* [~~an apprentice~~] shall work on a minimum of *sixty (60)* [~~forty (40)~~] cases. No more than two (2) *provisional licensees* [~~apprentices~~] may receive credit [~~due~~] for work on any one body. The commission by rule shall define the standards for a case and shall establish the minimum number of complete cases a *provisional licensee* [~~an apprentice~~] is required to execute during the *provisional license program* [~~apprenticeship~~]. The standards required for a complete case shall include all the duties and activities necessary for embalming. The commission by rule also shall establish guidelines for *provisional licensee supervision* [~~apprentice supervisors~~] under which a *provisional licensee* [~~an apprentice~~] is granted increased responsibilities during the course of the *program* [~~apprenticeship~~].

(c) A *provisional* [~~An apprentice~~] embalmer must report to the commission within ten (10) days after the end of each month each [~~separate~~] case handled by the *provisional embalmer* [~~him~~] or with which the *provisional embalmer* [~~he has~~] assisted in handling during that month. Each such report shall be certified by the licensee under whose personal supervision [~~whom~~] the *provisional embalmer* [~~apprentice~~] performed the [~~his~~] work. For [~~Throughout the period of apprenticeship, the apprentice shall report on at~~

~~least one (1) such case of embalming each calendar month, within the month. In] any month in which the provisional embalmer [he] did not embalm at least one (1) case under the personal supervision [direction] of a licensed embalmer, a report shall be made to the commission notwithstanding.~~

(d) The commission shall set the *license* [registration] and examination fees in an amount that is reasonable and necessary for the administration of the *program* [registration and examination].

2. *Provisional License* [Apprentice] for Funeral Director: The term of the *provisional license program* [apprenticeship] for a funeral director's license shall be a period of not less than twelve (12) months, and may be served concurrently with the *provisional license program* [apprenticeship] for an embalmer's license; however, the *provisional license program* [apprenticeship] must be served in twelve (12) consecutive months. A person desiring to become a *provisional* [an apprentice] funeral director shall make application to the commission on a form provided by the commission[, and if the commission desires, he shall appear before at least one (1) member of the commission, or a designated representative thereof, for approval of his application, subject to review of it by the entire commission]. An applicant must be not less than eighteen (18) years of age and have completed the educational requirements prescribed for a funeral director[, except that the commission by rule may allow an applicant for a funeral director's license to begin serving the one (1) year apprenticeship before or after the applicant enrolls in a school of embalming or college of mortuary science]. The application for registration shall be sworn to and accompanied by a [registration] fee. If the application is accepted, an applicant will be issued a *provisional license* [certificate of apprenticeship registration] upon determination by the commission that his qualifications are satisfactory.

(a) An applicant for a funeral director's license and the examination therefor [who has not begun one (1) year of apprenticeship prior to graduation from a school of embalming or college of mortuary science] shall be admitted to the *provisional license program* [apprenticeship] only if the applicant applies for and takes the written examination given by the commission, and pays the *license* [registration] fee, whereupon he may [shall] be licensed [registered] as a *provisional funeral director* if the applicant otherwise meets the requirements of this Act. An applicant who has not been licensed as a *provisional funeral director* before the second anniversary of the date the applicant took the examination must pass the examination again before being licensed as a *provisional funeral director*. [an apprentice. Provided, however, an applicant must register as an apprentice within six (6) months of such examination.]

(b) A *provisional* [An apprentice] funeral director must report to the commission within ten (10) days after the end of each month each [separate] case that the *provisional funeral director* [with which he has] assisted in handling during that month. Each [such] report shall be certified to by the licensee under whom the *provisional funeral director* [apprentice] performed the work. For [Throughout the period of apprenticeship the apprentice shall report on at least one (1) such case each calendar month, within the month. In] any month within which the *provisional funeral director* [he] did not assist a licensed funeral director in handling a funeral, a report shall be made to the commission notwithstanding.

(c) The *provisional license program* [An apprenticeship] shall include assisting a licensed funeral director in this state with a minimum of *sixty (60)* [forty (40)] cases. No more than two (2) *provisional licensees* [apprentices] may receive credit for work done on any one body. The commission by rule shall define the standards for a case and shall set the number of complete cases a *provisional licensee* [an apprentice] is required to execute during the *program* [apprenticeship]. The standards required for a complete case shall include all the activities necessary from the time the body is obtained until final disposition. The commission by rule also shall establish guidelines for *provisional licensee supervision* [apprentice supervisors] under which a *provisional licensee* [an apprentice] is granted increased responsibilities during the course of the *provisional license program* [apprenticeship].

(d) The commission shall set the *license* ~~[registration]~~ and examination fees in an amount that is reasonable and necessary for the administration of the *program* ~~[registration and examination]~~.

(e) *An applicant for a funeral director license may not be considered for licensure until the applicant completes all of the requirements of the provisional license program and attains a grade of 75 percent or higher on the written examination given by the commission. The commission may require an applicant to appear before at least one member of the commission for approval of the person's application. The approval is subject to review by the entire commission.*

3. ~~Annual renewal of provisional license~~ ~~[apprenticeship certificate]:~~ Each *provisional license* ~~[certificate of apprenticeship]~~ issued by the commission to a *provisional* ~~[an apprentice]~~ embalmer or ~~[apprentice]~~ funeral director must be renewed on the first day of January of each year and will be renewed upon payment by the *provisional licensee* ~~[apprentice]~~ of a renewal fee, provided the *provisional licensee* ~~[apprentice]~~ has observed the rules and regulations of the commission ~~[with respect to his apprenticeship]~~. Notice shall be mailed, during the month of December each year, to each *provisional licensee* ~~[registered apprentice]~~ at his last known address, notifying him that the renewal fee is due. If a *provisional licensee* ~~[registered apprentice]~~ fails to pay the annual renewal fee by the due date, the commission shall impose a late payment penalty equal in amount to the license renewal fee and shall suspend *the license* ~~[his certificate]~~ for nonpayment and notify *the provisional licensee* ~~[such apprentice]~~ of such suspension. If the said renewal fee and penalty are not then paid within ninety (90) days from the date of such notice of suspension, the commission shall then cancel *the license* ~~[such certificate]~~. Provided, however, after *the license* ~~[an apprentice certificate]~~ has been cancelled, the *provisional licensee* ~~[apprentice]~~ may apply for reinstatement within eighteen (18) months from the date *the license* ~~[such apprentice certificate]~~ was cancelled and the commission may reinstate *the provisional licensee* ~~[said apprentice]~~ provided ~~[he meets]~~ all other requirements of the commission are met and ~~[pays]~~ the license fee and a late payment penalty equal in amount to the license fee for the period of the cancellation are paid. A *provisional license* ~~[certificate of apprenticeship]~~ may not be renewed for more than *two* (2) ~~[a total period of five (5)]~~ years from the date of its issuance *unless the person requests and receives an extension based on hardship from the commission.* It is provided that the registration fee of any *provisional licensee* ~~[apprentice]~~ who is actively engaged in the military service of the United States may be remitted for the duration of such service or for such fees and such time as the commission may deem advisable upon presentation of proper evidence required by the commission. The commission shall set the renewal fee and the penalty in an amount that is reasonable and necessary for the administration of this Act. A *provisional license* ~~[An apprentice certificate]~~ that has been cancelled or suspended or has lapsed for a period of five (5) years or more may be reinstated only if the applicant takes and passes the applicable *examinations* ~~[apprenticeship examination]~~ under Subdivision 1 or 2 of this subsection. The commission may adopt rules relating to the reinstatement of *provisional licenses* ~~under this subdivision~~ ~~[such an apprenticeship certificate]~~.

~~[3a. The commission by rule shall adopt a system under which certificates expire on various dates during the year. The date for sending notice that payment is due and the date for suspension due to nonpayment shall be adjusted accordingly. For the year in which the certificate expiration date is changed, certification fees payable on January 1 shall be prorated on a monthly basis so that each certificate holder shall pay only that portion of the certification fee which is allocable to the number of months during which the certificate is valid. On renewal of the certificate on the new expiration date the total renewal fee is payable.]~~

4. Notification of the commission upon entry into *the provisional license program* ~~[apprenticeship]:~~ When a *provisional licensee* ~~[an apprentice]~~ enters the employ of a licensed embalmer or funeral director, *the provisional licensee* ~~[he]~~ shall immediately notify the commission of the name and place of business of the licensed embalmer or funeral director ~~[whose service he has entered and the name of the funeral director or embalmer]~~ under whom *the provisional licensee* ~~[he]~~ will train, and such notification shall be signed by the embalmer or funeral director in each case. If at any time thereafter *the provisional licensee* ~~[such apprentice]~~ leaves the employ of the licensed embalmer or funeral director

~~[whose services he has entered], the [said] licensed embalmer or funeral director shall give the provisional licensee [to such apprentice] an affidavit showing the length of time the provisional licensee [he] has served [as an apprentice with him] and the number of cases handled while so employed; the original of said affidavit shall be filed with the commission and made a matter of record, and a copy shall be furnished to the provisional licensee [apprentice]. The commission shall furnish report forms to be used by each provisional licensee [apprentice].~~

5. ~~A provisional licensee is subject to the same disciplinary actions as a holder of a funeral director or embalmer license for a violation of this Act or a rule adopted under this Act [certificate of apprenticeship may be suspended or revoked as provided and set forth in Section 3, subsection H].~~

E. Any person engaged or desiring to engage in the practice of embalming or funeral directing in this state, in connection with the care and disposition of dead human bodies, shall make written application to the commission for a license accompanying same with an application fee. The license or licenses when issued shall be signed by a majority of the commission and shall authorize the licensee to practice the science of embalming and/or funeral directing. All licenses shall be ~~registered in the office of the County Clerk in any county in which the holder thereof resides and practices embalming and/or funeral directing and shall be~~ displayed conspicuously in each ~~the~~ place of business at which the licensee practices funeral directing or embalming. A person may renew an unexpired license by paying to the commission before the expiration date of the license the required renewal fee. If a person's license has been expired for ninety (90) days or less, the person may renew the license by paying to the commission the required renewal fee and a penalty fee that is one-half of the renewal ~~examination~~ fee for the license. If a person's license has been expired for longer than ninety (90) days but less than five (5) ~~two (2)~~ years, the person may renew the license by paying to the commission all unpaid renewal fees and a penalty fee that is equal to one-half of the total of the unpaid renewal fees ~~examination fee for the license~~. If a person's license has been expired for five (5) ~~two (2)~~ years or longer, the person may not renew the license. The person may obtain a new license by submitting to reexamination and complying with the requirements and procedures for obtaining an original license. However, the commission may renew without reexamination an expired license of 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 (2) years preceding application. The person must pay to the commission a fee that is equal to the renewal ~~examination~~ fee for the license. At least thirty (30) days before the expiration of a person's license, the commission shall send written notice of the impending license expiration to the person at the person's ~~licensee's~~ last known address according to the records of the commission. The commission may by rule require continuing education as a condition for license renewal except for persons described in Subdivisions 4 and 5 of this subsection. If any license issued under this Act is ~~shall be~~ lost or destroyed, the holder of any such license may present his application for duplicate license to the commission, on a form to be prescribed by the commission, together with his affidavit of such loss or destruction, and that he is the same person to whom such license was issued, and such other information concerning its loss or destruction as the commission shall require, and shall, upon payment of a duplicate license fee, as determined by the commission, be granted a duplicate license.

H. The commission may, after a hearing as provided by Section 6C of this Act, reprimand, assess an administrative penalty, revoke, suspend, or probate the suspension of a license or provisional license, or impose any combination of these sanctions against a licensed ~~seek appropriate injunctive relief against a funeral establishment, licensed embalmer, or~~ funeral director, a licensed embalmer, or a provisional licensee ~~who fails to comply with any provision of this Act, including a violation relating to prepaid funeral services or funeral services delivered at the time of need. This Act does not affect any remedy or enforcement power under other laws]. The commission may assess an administrative penalty without a hearing if the penalty is assessed [against a licensed individual or establishment] in the manner provided by Section 6G of this Act [or as the result of a hearing conducted in the manner provided by Section 6C of this Act]. Action taken by the commission under this section may be based only on a violation of this Act or a rule adopted under this Act. The commission may refuse without a hearing to license a person or to permit a person to serve~~

as a provisional licensee if the person has violated this Act or a rule adopted under this Act. A person whose license or provisional license application is refused under this subsection may appeal the decision by requesting a hearing not later than the 30th day after the date of the refusal. The commission and the person whose application for license or provisional license is refused may agree to the issuance of a probationary license or the commission may, after a hearing, order that a license be issued on a probationary basis. A violation of this Act includes the following ~~[After a hearing conducted in the manner provided by Section 6C, the commission may issue a reprimand under Section 6H of this Act. The commission may assess an administrative penalty, revoke, suspend, or place on probation any licensed funeral director and/or embalmer or apprentice who violates any provision of this Act, including a violation relating to prepaid funeral services or funeral services delivered at the time of need. The commission may issue a reprimand or refuse to license or admit persons to examination for any of the following reasons all of which are offenses as provided in Section 6A of this Act]:~~

1. The presentation to the commission of any license, certificate, or diploma *that* [which] was illegally or fraudulently obtained, or when fraud or deception has been practiced in passing the examination;
2. Conviction of:
 - (A) a felony; or
 - (B) a misdemeanor related to the practice of embalming or funeral directing;
3. Being unfit to practice as a funeral director and/or embalmer by reason of insanity and having been adjudged by a court of competent jurisdiction to be of unsound mind;
4. The use of any statement that misleads or deceives the public, including but not limited to false or misleading statements regarding (1) any legal, religious, or cemetery requirement for funeral merchandise or funeral services, (2) the preservative qualities of funeral merchandise or funeral services in preventing or substantially delaying natural decomposition or decay of human remains, (3) the airtight or watertight properties of a casket or outer enclosure, or (4) representations as to licensed personnel in the operation of a funeral establishment;
5. The purchase, sale, barter, or use, or any offer to purchase, sell, barter, or use any license, certificate, or transcript of license or certificate, in or incident to an application to the commission for license to practice as a funeral director and/or embalmer;
6. Altering, with fraudulent intent, any funeral director and/or embalmer license, certificate, or transcript of license or certificate;
7. The use of any funeral director and/or embalmer license, certificate, diploma[,] or transcript of any such funeral director and/or embalmer license, certificate, or diploma *that*[,] ~~which~~ has been fraudulently purchased, issued, counterfeited, or materially altered;
8. The impersonation of, or acting as proxy for, another in any examination required by this Act for a funeral director and/or embalmer license;
9. The impersonation of a licensed funeral director or embalmer as authorized by *this Act* [hereunder], or permitting[,] or allowing another to use a *person's* [his] license[,] or certificate to practice as a funeral director or embalmer in this state;
10. A violation of Section 1, 5, or 9, Chapter 512, Acts of the 54th Legislature, Regular Session, 1955 (Article 548b, Vernon's Texas Civil Statutes), or a rule adopted under that Act;
11. Taking custody of a dead human body without the permission of the person or the agent of the person authorized to make funeral arrangements for the deceased, or without the permission of the medical examiner or justice of the peace when a medical examiner or justice of the peace has jurisdiction over the body under Articles 49.02, 49.03, 49.04, and 49.05, Code of Criminal Procedure, ~~[embalming, or]~~ refusing to promptly surrender a dead human body to a person or [his] agent authorized to make funeral arrangements for the deceased, or embalming a body without the express written or oral permission of a person authorized to make funeral arrangements for the deceased or without making a documented reasonable effort over a period of at least *three (3)* ~~[two (2)]~~ hours to obtain the permission;

11A. *Embalming or attempting to embalm* [~~Attempting~~] without proper authority [~~to embalm~~] a dead human body. *Evidence of embalming or attempting to embalm includes, but is not limited to, [as evidenced by the use of sutures or mechanical devices in the posing of any facial feature and:*

[(A)] the making of any incision on the body, [~~—~~];

[(B)] the raising of any circulatory vessel of the body, *or the injection of any chemical into the body;*

12. Wilfully making any false statement on a certificate of death *or on a document required by this Act or by a rule adopted under this Act;*

13. Employment directly or indirectly of any *provisional licensee* [~~apprentice~~], agent, assistant, embalmer, funeral director, employee, or other person on a part or full-time basis, or on commission, for the purpose of soliciting individuals or institutions by whose influence dead human bodies may be turned over to a particular funeral director, [~~or~~] embalmer, *or funeral establishment;*

14. Presentation of false certification of work done as a *provisional licensee* [~~an apprentice on apprenticeship records~~];

15. Unfitness by reason of present *substance abuse* [~~drug addiction~~];

16. Whenever a licensee, *provisional licensee* [~~apprentice~~], or any other person, whether employee, agent, [~~or~~] representative, or one in any manner associated with a funeral establishment *engages* [~~shall engage~~] in solicitation as defined in this Act;

17. Failure by the Funeral Director in Charge to provide licensed personnel for direction or personal supervision for a "first call," as that term is defined in this Act;

18. *Misappropriation* [~~Intentional misappropriation~~] of any funds held by a licensee, funeral establishment, including its employees and agents, or other depository, that *create* [~~creates~~] an obligation to provide a funeral service or merchandise, including retention for an unreasonable time of excess funds paid by or on behalf of the consumer for which the consumer is entitled to a refund;

19. Performing acts of funeral directing or embalming, as those terms are defined in this Act, *that* [~~which~~] are outside the licensed scope and authority of the licensee, or performing acts of funeral directing or embalming in a capacity other than that of an employee, agent, subcontractor, or assignee of a licensed funeral establishment that has contracted to perform those acts;

20. Engaging in fraudulent, *unprofessional*, or deceptive conduct in providing funeral services or merchandise to a consumer;

21. Statement or implication by a funeral director or embalmer that a customer's concern with the cost of any funeral service or funeral merchandise is improper or indicates a lack of respect for the deceased;

22. Failure by any person arranging for funeral services or merchandise to:

(A) *provide a prospective customer with a copy of the brochure required by Section 6E of this Act at the beginning of the arrangement process* [~~inform a customer or prospective customer of the availability of a retail price list~~];

(B) provide a retail price list to *an individual inquiring in person about any funeral service or merchandise* [~~the customer or prospective customer~~] for that person to keep;

(C) explain to the customer or prospective customer that a contractual agreement for funeral services or merchandise may not be entered into before the presentation of the retail price list to that person; or

(D) provide general price information by telephone within a reasonable time;

23. Failure by any person arranging for funeral services or merchandise to provide each customer *at the conclusion of the arrangement process* a written memorandum or funeral purchase agreement *signed by the funeral director making the arrangements* itemizing the cost of funeral services and funeral merchandise selected by the customer; however, if the customer selects a package arrangement based on unit pricing, the itemization requirement is satisfied by providing a written memorandum that itemizes the discount provided by the

package arrangement. The use of unit pricing does not *affect* [~~preclude~~] the presentation of the retail price list as required by Subdivision 22 of this subsection;

24. Restricting, hindering, or attempting to restrict or hinder (1) the advertising or disclosure of prices and other information regarding the availability of funeral services and funeral merchandise that is not unfair or deceptive to consumers, or (2) agreements for funeral services between any consumer or group of consumers and funeral directors or embalmers;

25. Failure to retain and make available to the commission, upon request, copies of all price lists, written notices, *embalming documents*, and memoranda of agreement required by this Act [~~article~~] for two (2) years after the date of their distribution or signing;

26. Violation of this Act, [~~or of~~] any rule *adopted under this Act* [~~regulation~~], an [~~or~~] order *by the commission* revoking, suspending, or probating a license, *an order assessing an administrative penalty, or an agreement to pay an administrative penalty regardless of whether the agreement is express or implied by Section 6G(d) of this Act* [~~issued under this Act~~];

27. Dishonest conduct, *wilful conduct, negligence*, or gross negligence in the practice of embalming or funeral directing that is likely to *or does* deceive, defraud, or otherwise injure the public; [~~and~~]

28. Allowing the use of a dead human body [~~bodies~~] by an unlicensed embalming establishment for research or educational purposes without the written permission of the family or person arranging the funeral; *and*

29. *Causing the execution of a document by the use of fraud, deceit, or misrepresentation.*

J. A person who wishes to apply for a funeral director or embalmer license but has a criminal conviction described by Subsection H.2. of this section, may request a hearing on whether the conviction prevents the commission from issuing a license or provisional license. A hearing under this subsection must be requested before the person enters mortuary school and shall be conducted as required under Section 6C of this Act. A decision made in a hearing under this subsection, unless modified on appeal, is binding on the commission and on the person who requests the hearing when the person applies to the commission for the license or provisional license.

SECTION 6. Subsections B, C, D, and G, Section 4, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), are amended to read as follows:

B. No funeral establishment shall conduct funeral business as intended under this Act unless duly licensed. *The commission may refuse to issue an establishment license to an individual, partnership, or corporation if the individual, a partner, or an officer or director of the corporation:*

(1) *has been convicted of a felony, or a misdemeanor related to the practice of embalming or funeral directing;*

(2) *previously held an establishment license that was suspended or revoked;*

(3) *has violated this Act, a rule adopted under this Act, or Chapter 512, Acts of the 54th Legislature, Regular Session, 1955 (Article 548b, Vernon's Texas Civil Statutes);*

(4) *submits false information on the application for an establishment license; or*

(5) *attempts to avoid a revocation, suspension, or license refusal by subterfuge or other evasive means.*

C. Each funeral establishment shall be required to have a physical plant, equipment and personnel consisting of the following:

1. Some facilities in which funeral services may be conducted;

2. A physical plant which meets building standards and fire safety standards of the state and of the municipality in which the establishment is located;

3. Access to rolling stock consisting of at least one motor hearse;

4. A preparation room containing *facilities, equipment, and supplies required by commission rule to ensure the provision of adequate embalming services* [~~an operating table, sewer facilities, hot and cold running water,~~] and other facilities necessary to comply with the sanitary code of the state and the municipality in which the room is located;

5. A display containing sufficient merchandise to permit reasonable selection, including five (5) or more adult caskets, provided that the least expensive casket offered for sale by a funeral establishment must be visibly displayed without concealment in the same general manner as other caskets are displayed;

6. Sufficient licensed personnel who will be available to conduct the operation of the funeral establishment;

7. A physical plant located at a fixed place, and not located on any tax-exempt property or cemetery; and

8. A physical plant which meets the health standards or health ordinances of the state and of the municipality in which the establishment is located.

It is expressly provided, however, that an establishment which functions solely as a commercial embalmer, as that term is defined in this Act, shall have a commercial embalmers establishment license, but shall not be required to meet the requirements of sub-sections 1 and 5 of this paragraph C.

D. 1. The commission may, *after a hearing as provided by Section 6C of this Act, reprimand, assess an administrative penalty, revoke, suspend, or probate the suspension of a license, or impose any combination of these sanctions against a licensed funeral establishment. The commission may assess an administrative penalty without a hearing if the penalty is assessed as provided by Section 6G of this Act. Action taken by the commission under this section may only be based on a violation of this Act or a rule adopted under this Act. The commission may refuse without a hearing to license an establishment if an owner of the establishment has committed an act listed in Subsection B of this section. An establishment whose license is refused under this subsection may appeal the decision by requesting a hearing not later than the 30th day after the date of the refusal. The commission and the establishment whose application for license is refused may agree to the issuance of a probationary license or the commission may, after a hearing, order that a license be issued on a probationary basis. A violation of this Act includes the following* [~~initiate action against a funeral establishment or in regard to the license of a funeral establishment upon the following grounds~~]:

(a) Failure of a funeral establishment to substantially comply with the provisions of Subsection B or C of this Section.

(b) Failure by any person associated with the funeral establishment, whether as an employee, agent, subcontractor, assignee, *owner*, or otherwise, and whether licensed or unlicensed, to comply with [~~Section 3 of~~] this Act *or a rule adopted under this Act.*

(c) The use of any advertising statement of a character *that* [~~which~~] misleads or deceives the public, or use of, in connection with advertisements, the names of persons who do not hold a license as a funeral director or embalmer and *representing* [~~represent~~] them *as being* [~~to be~~] so licensed.

(d) Whenever a licensee, *provisional licensee* [~~apprentice~~], or any other person, whether *an* employee, agent, or representative, or one in any manner associated with a funeral establishment shall solicit business or offer any inducement, pecuniary or otherwise, for the purpose of securing or attempting to secure business for such funeral establishment, unless such solicitation is made pursuant to a permit issued under Chapter 512, Acts of the 54th Legislature, Regular Session, 1955[, ~~as amended~~] (Article 548b, Vernon's Texas Civil Statutes).

(e) Failure by the funeral director in charge to provide a licensed *funeral director* [~~personnel~~] for direction or personal supervision of [~~for~~] a "first call" as that term is defined in this Act.

(f) Any violation by a funeral establishment or a person acting on behalf of a funeral establishment or any person directly or indirectly connected with a funeral establishment [~~who violates any provision~~] of Chapter 512, Acts of the 54th Legislature, Regular

Session, 1955 (Article 548b, Vernon's Texas Civil Statutes) or a rule adopted under that Act.

(g) Any violation by a funeral establishment or a person acting on behalf of a funeral establishment of ~~[under]~~ Chapter 193 or 361, Health and Safety Code.

2. ~~With [Provided, however, with] respect to [alleged] violations of Subsection D. 1.(b), (c), (d), (e), (f), or (g), the commission may not initiate action against a funeral establishment or in regard to the license of a funeral establishment if [when] the [ground or grounds of] complaint is [are] based on the conduct of employees, agents, or representatives of such establishment performed outside the scope and authority of their employment or contrary to the instructions of the funeral establishment and its management. [The commission may initiate such an action if those persons are acting within the scope and authority of their employment, or by the direction of the funeral establishment management.~~

[2.—As to asserted violations of provisions of this Section, the commission shall have the following powers, rights and duties:

[~~(a) The commission may, in any case, require a sworn statement setting forth matter complained of as a condition to taking further action.~~

[~~(b) The commission shall cause an investigation to be made whenever a complaint is filed with or by the commission. The commission may investigate a complaint relating to prepaid funeral services only if the investigation conducted by the commission does not interfere with or duplicate an investigation conducted by the Banking Department of Texas under Chapter 512, Acts of the 54th Legislature, 1955 (Article 548b, Vernon's Texas Civil Statutes), relating to prepaid funeral services.~~

[~~(c) The commission may assess an administrative penalty, revoke or suspend a funeral establishment or a commercial embalming establishment license, issue a reprimand against such a licensee, or place a licensee on probation for a violation of this Act or of a rule or regulation adopted under this Act. The commission may also assess an administrative penalty in the manner provided by Section 6G of this Act for such a violation.]~~

G. (1) Any premises on which funeral directing or embalming is practiced shall be open at all times to inspection for violations of ~~[under]~~ this Act and of ~~[under]~~ Chapters 193 and 361, Health and Safety Code, by any agent of the commission or by any duly authorized agent of the state or of the *county* or municipality in which the premises are located. Each licensed funeral establishment shall be thoroughly inspected *annually* [biennially] by an agent of the commission or by an agent of the state or a political subdivision thereof whom the commission has authorized to make inspections on its behalf. A report of this *annual* [biennial] inspection shall be filed with the commission.

(2) Before an agent of the commission conducts an inspection of an establishment, the agent shall review the inspection reports on the establishment filed with the commission. During the inspection, the agent shall determine whether previously identified problems have been corrected and whether a pattern of violations exists. The commission shall consider the information from inspection reports when the commission determines whether a penalty should be imposed against an establishment.

(3) When an agent inspects an establishment, the agent shall inspect for violations under this Act and under Chapters 193 and 361, Health and Safety Code.

(4) The commission by rule shall establish procedures for the inspection of a funeral establishment required by this subsection.

SECTION 7. Section 6, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6. *PROBATION, WARNING LETTERS; REINSTATEMENT* [~~REVOCATION, CANCELLATION OR SUSPENSION OF LICENSES OF FUNERAL DIRECTORS, EMBALMERS AND APPRENTICES~~]. (a) *If the* [The] commission *places* [~~may revoke or suspend a license, place~~] on probation a person whose license has been suspended, [~~or reprimand a licensee for a violation of this Act or a rule of the commission. If a licensee suspension is probated,~~] the commission may *impose conditions on the probation that are*

reasonable and related to the violation for which the license was suspended. If the commission orders probation, the commission may require the licensee [practitioner]:

- (1) to report regularly to the commission on matters that are the basis of the probation;
- (2) to limit practice to the areas prescribed by the commission; or
- (3) to continue or renew professional education until the licensee [practitioner] attains a degree of skill satisfactory to the commission in those areas that are the basis of the probation.

(b) If the commission places a licensee on probation, the commission shall notify the licensee in writing of the probation. The commission shall furnish the licensee with written probationary orders that detail the actions required by the commission of the licensee during the period of probation. The commission shall develop and adopt a system to monitor the actions of a licensee during the period of probation and to determine whether the licensee has complied with the probationary orders.

(c) When the commission has conducted an investigation that identifies a violation of this Act by a licensee and the commission does not assess an administrative penalty, issue a reprimand, or impose any other penalty against the licensee, the commission shall issue a written warning to the licensee. The warning shall describe the violation identified during the investigation and shall state the date by which the commission must receive from the licensee a written report that describes the measures implemented by the licensee to correct the violation and the dates those measures were implemented. If the commission does not receive the report by the required date, the commission shall assess an administrative penalty, in an amount set by the commission, on the licensee for the failure to file the report.

~~(d) [Proceedings under this Section shall be initiated by filing charges with the commission in writing and under oath. Said charges may be made by any person or persons. If the commission proposes to suspend or revoke a person's license, the person is entitled to a hearing before the commission or a hearings officer appointed by the commission. The commission shall prescribe procedures by which all decisions to suspend or revoke are made by or are appealable to the commission. The Executive Director of the commission shall set a time and place for hearing.] Upon application, the commission may reissue a license to practice as a funeral director or embalmer to a person whose license has been cancelled, [or] suspended, or revoked but such application may[, in the case of cancellation or revocation, shall] not be made prior to one (1) year after the cancellation, suspension, or revocation, and shall be made in such a manner and form as the commission may require. A hearing to determine whether to reissue a license shall be held before the commission unless the commission requires the hearing to be held before a hearings officer.~~

~~(e) The commission shall have the power to appoint committees from the commissioners. The committees may consider such matters pertaining to the enforcement of this Act as shall be referred to such committees, and they shall make recommendations to the commission with respect thereto. The commission shall have the power, and may delegate the said power to any committee, to issue subpoenas duces tecum, and to compel the attendance of witnesses, the production of books, records and documents, to administer oaths, and to take testimony concerning all matters within its jurisdiction. The determination shall be founded on sufficient legal evidence to sustain it. The commission shall have the right to institute an action in its own name to enjoin the violation of any of the provisions of this Act. Said action for an injunction shall be in addition to any other action, proceeding, or remedy authorized by law. The commission shall be represented by the Attorney General and/or the County or District Attorneys of this state, or counsel designated and empowered by the commission. Before entering any order cancelling, suspending, refusing to renew, or revoking a license to practice as a funeral director and/or embalmer, the commission shall hold a hearing in accordance with the procedure as set forth in this Act.~~

~~(f) The provisions of this Section shall not apply to funeral establishments or licenses pertaining to funeral establishments.]~~

SECTION 8. Section 6A, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6A. OFFENSES. A person commits an offense if the person:

(1) acts or holds himself out as a funeral director, embalmer, or *provisional licensee* [~~apprentice~~], as those terms are defined in this Act, without being properly licensed under this Act or *makes* [~~shall make~~] a “first call” *in a manner that violates* [~~without the authorization or supervision as provided in~~] Section 1C of this Act;

(2) is a licensed funeral director, [~~or~~] embalmer, or *provisional licensee* and engages in a funeral practice that is *a violation of this Act or a rule adopted under this Act* [~~grounds for suspension or revocation of the person's license~~]; or

(3) violates Section 1, 5, or 9, Chapter 512, Acts of the 54th Legislature, Regular Session, 1955 (Article 548b, Vernon's Texas Civil Statutes), *or a rule adopted under that Act*, regardless of whether the Banking Department of Texas or any other governmental agency takes action relating to the violation.

SECTION 9. Section 6C, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6C. ADMINISTRATIVE PROCEDURE AND TEXAS REGISTER ACT. (a) A person who is denied a license or *provisional license* [~~certificate~~] by the commission is entitled to a hearing before the commission in accordance with the Administrative Procedure and Texas Register Act, [~~as amended~~] (Article 6252-13a, Vernon's Texas Civil Statutes), if the person requests the hearing in writing *not later than the 30th day after the date the notice of denial is sent*.

(b) A proceeding conducted by the commission relating to the *denial of a license or provisional license, the suspension or revocation of a license, or the imposition of an administrative penalty, other than an administrative penalty assessed without a hearing as provided by Section 6G of this Act, [~~or certificate~~]* is governed by the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes). Judicial review of the proceeding is subject to the substantial evidence rule and is governed by the Administrative Procedure and Texas Register Act.

(c)(1) A proceeding brought under Subsection (b) of this section *may* [~~shall~~] be held before a hearings officer. *The executive director shall set a time and place for the hearing.*

(2) The hearings officer must be an attorney licensed in this state. In the course of a proceeding the hearings officer may:

- (A) administer oaths;
- (B) take testimony;
- (C) rule on questions of evidence;
- (D) make determinations of fact; or
- (E) order compliance with proper discovery requests.

(3) The commission shall provide the hearings officer with a written statement of all commission rules or policies that govern the proceeding.

(4) At the conclusion of the proceeding the hearings officer shall make a ruling on the matter accompanied by written findings of facts and conclusions of law.

(5) The commission shall review the findings of fact, conclusions of law, and ruling of the hearings officer before making its final ruling in the proceeding. The commission may also review a transcript of the proceeding before making its final ruling. The commission shall adopt the ruling of the hearings officer as its ruling unless it finds good cause to issue a different ruling. The commission shall explain in writing the reasons for adopting a ruling other than the one issued by the hearings officer.

[~~(6) Not later than the 10th day after the date the hearings officer makes a ruling, the licensee may appeal the ruling to the commission. Except for good cause, the commission shall make its final ruling not later than the 10th day after the date the appeal is made.]~~

(d) The commission shall inform each interested person, including a person filing the complaint, of *the* [~~their~~] right to obtain at that person's cost a tape or transcript of a hearing or proceeding under this section.

SECTION 10. Section 6D(e), Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended to read as follows:

(e) If a person files a complaint with the commission relating to a licensed funeral director, embalmer, *provisional licensee*, or funeral establishment, the commission shall furnish to the person an explanation of the remedies that are available to the person under this Act and information about appropriate state or local agencies or officials with which the person may file a complaint.

SECTION 11. Section 6G, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6G. ADMINISTRATIVE PENALTY. (a) If the commission determines that a person or establishment regulated under this Act has violated this Act or a rule adopted under this Act [~~in a manner that constitutes a ground for a license suspension under Subsection H, Section 3, or Section 4 of this Act~~], the commission may assess an administrative penalty against that person or establishment as a result of a hearing conducted in the manner provided by Section 6C of this Act or as provided by this section. If an administrative penalty is assessed after a hearing conducted under Section 6C of this Act, the commission shall follow the procedures described in Subsections (e) through (h) of this section.

(b) The commission may assess the administrative penalty in an amount not less than One Hundred Dollars (\$100) or more than Five Thousand Dollars (\$5,000) for each act of violation. In determining the amount of the penalty, the commission shall *employ guidelines established by commission rule* [~~consider the seriousness of the violation~~].

(c) If, after examination of a possible violation and the facts relating to that possible violation, the commission concludes that a violation has occurred, the commission shall issue a preliminary report that states the facts on which the conclusion is based, the fact that an administrative penalty is to be imposed, and the amount to be assessed. Not later than the tenth (10th) day after the day on which the commission issues the preliminary report, the commission shall send a copy of the report to the person or establishment charged with the violation, together with a statement of the right of the person or establishment to a hearing relating to the alleged violation and the amount of the penalty.

(d) Not later than the *thirtieth (30th)* [~~twentieth (20th)~~] day after the *date* [day] on which the *preliminary* report is sent, the person or establishment charged either may make a written request for a hearing or may remit the amount of the administrative penalty to the commission. Failure either to request a hearing or to remit the amount of the penalty within the time provided by this subsection results in a waiver of a right to a hearing under this Act. *Unless a hearing is requested, the penalty is due on the thirtieth (30th) day after the date the preliminary report is sent. Failure to pay the penalty by that date automatically suspends the affected license for six (6) months.* If the person or establishment charged requests a hearing, the hearing shall be conducted in the manner provided by Section 6C of this Act. [~~If it is determined after hearing that the person or establishment has committed the alleged violation, the commission shall give written notice to the person or establishment of the findings established by the hearing and the amount of the penalty, and shall enter an order requiring the person or establishment to pay the penalty.~~]

(e)(1) *If an administrative penalty is assessed after a hearing conducted under Section 6C of this Act, not [Not] later than the thirtieth (30th) day after the date [day] on which the order [notice] is sent or a motion for rehearing is denied [received], the person or establishment charged shall pay the administrative penalty in full, or, if the person or establishment wishes to contest either the amount of the penalty or the fact of the violation, the person or establishment shall not later than the thirtieth (30th) day after the date on which the order is sent or a motion for rehearing is denied:*

(A) remit the assessed amount to the commission for deposit in an escrow account; or

(B) post a supersedeas bond in a form approved by the commission for the amount of the penalty.

(2) If, after judicial review, it is determined that no violation occurred or that the amount of the penalty should be reduced, the commission shall remit the appropriate amount to the person or establishment charged with the violation not later than the thirtieth (30th) day after the *date* [day] on which the judicial determination becomes final.

(f) Failure to remit the amount of the administrative penalty to or post bond with the commission within the time provided by this Act ~~[section]~~ results in a waiver of all legal rights to contest the violation or the amount of the penalty. If the person or establishment fails to remit the amount of the administrative penalty to or post bond with the commission within that time, or within a longer period with the consent of the commission, the license of that person or establishment is suspended for six (6) months. After notice and a hearing, the commission may extend the license suspension for a longer period or may revoke or cancel the license for failure to remit the penalty or post bond.

(g) An administrative penalty owed under this Act *shall* ~~[section may]~~ be recovered in a civil action brought by the Attorney General at the request of the commission.

(h) A penalty collected under this Act ~~[section]~~ shall be deposited ~~[in the State Treasury]~~ to the credit of *an account in the general revenue fund that may be used only for the purpose of administering the continuing education program under Section 3 of this Act.*

SECTION 12. Section 6H(c), Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended to read as follows:

(c) Not later than the *thirtieth (30th)* ~~[twentieth (20th)]~~ day after the *date [day]* on which the *preliminary* report is sent, the person or establishment charged may make a written request for a hearing. Failure to request a hearing within the time provided by this subsection results in a waiver of a right to a hearing under this Act and the reprimand shall be issued by the commission and placed in the permanent files of the commission. If the person or establishment charged requests a hearing, the hearing shall be conducted in the manner provided by Section 6C of this Act. If it is determined after hearing that the person or establishment has committed the alleged violation, the commission is not limited to the issuance of a reprimand but may also take any action allowed under ~~[Subsection H, Section 3, or Subsection D, Section 4, of]~~ this Act.

SECTION 13. Section 6I, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 6I. REPEAT AND MULTIPLE OFFENDERS. (a) The commission *or [and]* a hearings officer shall review each disciplinary proceeding to determine whether the licensee has committed the same type of violation on one or more previous occasions. If it is determined that the licensee has previously committed the same type of violation, the commission or hearings officer shall impose a disciplinary action that is more severe than that imposed on the previous occasion.

(b) In a disciplinary proceeding involving multiple violations of this Act, the commission *or [and]* the hearings officer ~~[examiner]~~ shall impose a disciplinary action that is more severe than the disciplinary action that would be imposed *cumulatively* for each of the individual violations.

SECTION 14. Section 7(b), Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended to read as follows:

(b) The commission may file a complaint with the appropriate governmental authorities to begin prosecution of a person who commits an offense under Section 6A of this Act. The commission or any adversely affected party may sue a funeral establishment or ~~[licensed]~~ embalmer or funeral director who fails to comply with ~~[any provision of]~~ this Act *or a rule adopted under this Act* for appropriate injunctive relief. This Act does not affect a remedy or enforcement power under other laws.

SECTION 15. Section 9, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended to read as follows:

Sec. 9. CONSTRUCTION WITH OTHER LAW. This Act does not limit or replace the authority of the Banking Department of Texas to regulate and enforce Chapter 512, Acts of the 54th Legislature, Regular Session, 1955 (Article 548b, Vernon's Texas Civil Statutes). The authority of the commission *as to Chapter 512, Acts of the 54th Legislature, Regular Session, 1955 (Article 548b, Vernon's Texas Civil Statutes), and its subsequent amendments* is limited to the imposition of an administrative penalty, issuance of a reprimand, or suspension, revocation, or probation of a license issued by *the [that]* commission.

SECTION 16. Subsection K, Section 1, Chapter 251, Acts of the 53rd Legislature, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is repealed.

SECTION 17. This Act takes effect September 1, 1993.

SECTION 18. On the effective date of this Act any person serving as an apprentice under Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), will be converted to a provisional licensee under that Act. The provisional license of a person serving as an apprentice under that Act before attending or graduating from a school of embalming or college of mortuary science or before passing the appropriate licensing examination is canceled September 1, 1994, if the person has not enrolled in an accredited school of embalming or accredited college of mortuary science or passed the appropriate licensing examination before that date.

SECTION 19. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 11, 1993, by a non-record vote; the House concurred in Senate amendments to H.B. No. 466 on May 27, 1993, by a non-record vote; passed by the Senate, with amendments, on May 25, 1993, by a viva-voce vote.

Approved June 19, 1993.

Effective Sept. 1, 1993.