

CHAPTER 306

S.B. No. 95

AN ACT

relating to changing the name of the State Board of Morticians to the Texas Funeral Service Commission, to the powers and duties of that commission, and to regulation of funeral directing and embalming; providing administrative penalties.

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

SECTION 1. Section 1, Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended by amending Subsections B, C, E, H, J, K, T, and V, and by adding Subsection W to read as follows:

B. The term "directing a funeral," or "funeral directing" as herein used, shall mean the directing ~~[or personal supervision]~~ by a licensed funeral director from the time of the first call until interment or entombment services are completed, or until the body is released for transport to ~~[delivered into the hands of the persons in charge of]~~ a crematorium, or released ~~[until the body is delivered to another funeral director or]~~ to a public carrier.

C. The term "first call" shall mean the beginning of the relationship and duty of the funeral director to take charge of a dead human body and have same prepared by embalming, cremation, or otherwise, for burial or disposition, provided all laws pertaining to public health in this state are complied with. "First call" does not include calls made by ambulance, when the person dispatching the ambulance does not know whether a dead human body is to be picked up. A dead human body shall be picked up on first call only under the direction and personal supervision of a licensed funeral director or embalmer. A dead human body may be transferred from one funeral home to another funeral home and from a funeral home to and from a morgue where an autopsy is to be performed without a licensed funeral director personally making the transfer. *In circumstances in which there is no reasonable probability that unlicensed personnel will encounter family members or other persons with whom funeral arrangements are normally made by licensed funeral directors or embalmers, a dead human body may be picked up or transferred without the personal supervision of a funeral director or embalmer. Any inadvertent contact with family members or other persons shall be restricted to unlicensed personnel identifying the employer to the person, arranging an appointment with the employer for any person who indicates a desire to make funeral arrangements for the deceased, and making any disclosure to the person that is required by any federal or state regulation. A funeral director or embalmer who*

directs the removal or transfer of a dead human body without providing personal supervision shall be held strictly accountable for compliance with the requirements of and exceptions to "first call" as provided by this Act.

E. The term "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 registered as such by the *commission* [~~Board~~] prior thereto.

H. The term "due notice" as herein used shall mean published notice of the time and place of regular meetings of the *commission* [~~Board~~]. Notice of time, place, and purpose of any meeting of the *commission* filed with the *Texas Register* [~~Board published in at least three (3) daily newspapers in three (3) separate cities in the state~~], at least *seven (7)* [~~fifteen (15)~~] 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* [~~Board~~] is to be considered, shall be given by written notice *in the* [~~to all licensees in the State of~~] *Texas Register* [~~at the address registered with the Board,~~] at least thirty (30) days in advance of any hearing thereon.

J. An "accredited school or college of mortuary science" is a school or college which maintains a course of instruction of not less than forty-eight (48) calendar weeks or four (4) academic quarters or college terms and which gives a course of instruction that includes but is not limited to the following fundamental subjects: (a) mortuary management and administration; (b) legal medicine and toxicology as it pertains to funeral directing; (c) public health, hygiene and sanitary science; (d) mortuary science, to include embalming technique, in all its aspects; chemistry of embalming, color harmony; discoloration, its causes, effects and treatment; treatment of special cases; restorative art; funeral management; and professional ethics; (e) anatomy and physiology; (f) chemistry, organic and inorganic; (g) pathology; (h) bacteriology; (i) sanitation and hygiene; (j) public health regulations; (k) other courses of instruction in fundamental subjects prescribed by the *commission* [~~Board~~]; and (l) local, state, and federal rules and laws relating to the care and disposition of dead human bodies.

K. An "official application blank," as that term is used herein, is a sheet bearing blank spaces for the entering of stipulated information, which sheet shall be filled in by any person who seeks employment as funeral director or embalmer in this state. The form of this application blank shall be prescribed by the *commission* [~~Board~~]. Prospective employers shall have job applicants fill in this application blank and shall remit it upon completion to the *commission* [~~Board~~]. The *commission* [~~Board~~] shall inform employers as soon as possible of the status of the license of any person for whom it receives an official application blank.

T. "Written memorandum" means a written statement that itemizes the cost of funeral services or merchandise selected by a customer from the retail price list. The memorandum must also state the amount paid or owed to another person by the funeral establishment on behalf of the customer and each fee charged the customer for the cost of advancing funds or becoming indebted to another person on behalf of the customer. The memorandum must include the name, address, and telephone number of the funeral establishment and the following printed notice: "Charges are made only for items that are used. If the type of funeral selected requires extra items, we will explain the reasons for the extra items in writing on this memorandum." The memorandum must include the name, mailing address, and telephone number of the *Texas Funeral Service Commission* [~~State Board of Morticians~~] and a statement indicating that complaints may be directed to the *commission* [~~Board~~].

V. "Prospective customer" means *any* [~~a~~] consumer who enters a funeral establishment and inquires about [~~the price of~~] any funeral service, *cremation*, or merchandise. *The funeral establishment may not make a distinction in providing funeral information to any customer regardless of any affiliation of the customer or whether the customer has a present need for the services or merchandise.*

W. "Commission" means the *Texas Funeral Service Commission*.

SECTION 2. 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:

Sec. 2. *TEXAS FUNERAL SERVICE COMMISSION* [~~THE BOARD~~]. A. (1) There is hereby created the *Texas Funeral Service Commission* [~~State Board of Morticians~~], with offices located in Austin, Texas, consisting of nine (9) *commissioners* [~~members~~] who shall be citizens of the United States and residents of the State of Texas. Five (5) *commissioners* [~~members~~] must be licensed embalmers or funeral directors in the State of Texas and each of these *commissioners* [~~members~~] must have a minimum of five (5) years, consecutively, of such experience in this state immediately preceding appointment. At least three (3) such licensed *commissioners* [~~members~~] shall be embalmers. Four (4) *commissioners* [~~members~~] must be representatives of the general public who are not regulated under this Act.

(2) The *commissioners* [~~members of said Board~~] shall be appointed by the Governor, by and with the consent of the Senate for staggered terms of six (6) years. Each *commissioner* [~~member~~] shall be subject to removal by the Governor for neglect of duty, incompetence, or fraudulent or dishonest conduct. The Governor shall remove from the *commission* [~~Board~~] any *commissioner* [~~member~~] whose license to practice funeral directing and/or embalming has been voided, revoked or suspended. Any vacancy in an unexpired term shall be filled by appointment of the Governor for the unexpired term. No *commissioner* [~~member of the Board~~] shall be appointed for more than one (1) full term of service.

(3) A *commissioner* [~~member of the Board~~] or an employee of the *commission* [~~State Board of Morticians~~] who carries out the functions of the *commission* [~~Board~~] may not:

(a) be an officer, employee, or paid consultant of a trade association in the funeral industry;

(b) be related within the second degree by affinity or within the third degree by consanguinity to a person who is an officer, employee, or paid consultant of a trade association in the funeral industry; or

(c) communicate directly or indirectly with a party or the party's representative to a proceeding pending before the *commission* [~~Board~~] unless notice and an opportunity to participate is given to all parties to the proceeding, if the *commissioner* [~~member~~] or agent is assigned to make a decision, a finding of fact, or a conclusion of law in the proceeding.

(4) *Commissioners* [~~Members of the Board~~], except those *commissioners* [~~members~~] who are duly licensed embalmers or funeral directors, may not have personally, nor be related to persons within the second degree by affinity or third degree by consanguinity who have, except as consumers, financial interests in funeral establishments as officers, directors, partners, owners, employees, attorneys, or paid consultants of the funeral establishments or otherwise.

(5) No *person* [~~member~~] shall be appointed to the *commission* [~~Board~~] who is an officer or employee of a corporation or other business entity controlling or operating, directly or indirectly, more than three funeral establishments, if another *commissioner* [~~member of the Board~~] is also an officer or employee of the same corporation or other business entity.

(6) A person who is required to register as a lobbyist under Chapter 305, Government Code, by virtue of the person's activities for compensation in or on behalf of a profession related to the operation of the *commission*, may not act as the general counsel to the *commission* [~~Board~~] or serve as a *commissioner* [~~member of the Board~~].

(7) Appointments to the *commission* [~~Board~~] shall be made without regard to the race, creed, sex, religion, or national origin of the appointees.

(8) Each *commissioner* [~~member of the Board~~] shall be present for at least one-half of the regularly scheduled meetings held each year by the *commission* [~~Board~~]. The failure of a *commissioner* [~~member~~] to meet this requirement automatically removes *that commissioner* [~~the member~~] from the *commission* [~~Board~~] and creates a vacancy on the *commission* [~~Board~~].

B. *Each commissioner* [~~The members of said Board~~], before entering upon *the* [~~their~~] duties of office, shall take and subscribe to the oath of office prescribed for other state officials, which oath shall be filed in the office of the Secretary of State, after having been administered under proper authority. Each person appointed to the *commission* [~~Board~~] shall be furnished with a certificate of appointment by the Governor which shall bear evidence of the taking of oath of office.

C. The *commission* [~~Board~~] shall meet in Austin, Texas, in regular session at least two (2) times each year for the transaction of business. Examination for funeral directors and embalmers shall be held at least once during each year at such times and places as the *commission* [~~Board~~] may designate and give due notice thereof. Special meetings or hearings may be held at such time and place as may be determined by and upon call of the *Chairman, Vice-chairman,* [~~President, Vice-President~~] or three (3) *commissioners* [~~members of the Board~~].

D. The *commission* [~~Board~~] shall elect, after thirty (30) days' written notice is given to *the commissioners* [~~members~~], a *Chairman, Vice-chairman,* [~~President, Vice-President~~], and Secretary from the *commissioners* [~~members of the said Board~~] who shall serve one (1) year, or until their successor shall be elected and qualified in cases of resignation or death. In the absence of an Executive *Director* [~~Secretary~~], the Secretary shall be bonded to the State of Texas in a sum equal to the maximum annual anticipated receipts of the *commission* [~~Board~~] and any premium payable for such bond shall be paid from the funds of the *commission* [~~Board~~]; likewise, the *commission* [~~Board~~] will require a bond of the Executive *Director* [~~Secretary~~], if any, and such bond shall be deposited with the State Auditor of the State of Texas. The *Chairman* [~~President~~] of the *commission* [~~Board~~] shall preside at all meetings of the *commission* [~~Board~~] unless otherwise ordered, and he shall exercise all duties and performances incident to the office of *Chairman* [~~President~~] of the *commission* [~~Board~~], and in his absence the *Vice-chairman* [~~Vice-President~~] shall preside. A majority of the *commissioners* [~~membership of the Board~~] shall constitute a quorum for the transaction of business.

E. The *commission* [~~Board~~] shall make an annual report covering the work of the *commission* [~~Board~~] for the preceding fiscal year, and such report shall be filed with the Governor and shall include:

1. An itemized account of money received and expended and the purpose therefor which has been duly certified by the State Auditor;
2. The names of all duly licensed funeral directors, embalmers, and funeral establishments. A copy shall be filed with the Secretary of State for permanent record, a certified copy of which, under the hand and seal of the Secretary of State, shall be admissible as evidence in all courts; and
3. A description of the activities of the *commission* [~~Board~~] during the preceding fiscal year.

F. The *commission* [~~Board~~] shall preserve a record of its proceedings in a book kept for that purpose.

G. The *commission* [~~Board~~] shall keep a permanent, alphabetical record of all applications for licenses and the action thereon. Such records shall also show, at all times, the current status of all such applications and licenses issued.

H. The *commission* [~~Board~~] may employ such inspectors, and clerical and technical assistants, legal counsel, including an Executive *Director* [~~Secretary~~], 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* [~~Board~~].

I. *Each commissioner* [~~Membership of the Board~~] shall be reimbursed for necessary traveling expenses incident to attendance upon the business of the *commission* [~~Board~~], and in addition thereto, each shall receive a per diem allowance of Fifty Dollars (\$50) for each day actually spent by such *commissioner* [~~member~~] upon attendance to the business of the *commission* [~~Board~~], not to exceed sixty (60) days within a calendar year. The Secretary, in the absence of an Executive *Director* [~~Secretary~~], notwithstanding membership on the *commission* [~~Board~~], shall receive and be paid a salary for the time he devotes

to the business of the *commission* [Board], and the amount and method of payment shall be fixed by the *commission* [Board] and in addition thereto, he shall receive necessary traveling expenses incurred in the performance of such duty; provided, however, he shall not be paid a per diem allowance during the time he is compensated on a salary basis; and provided that all such expenses, per diem allowance and compensation shall be paid out of the receipts of the *commission* [Board]. All fees and other funds received by the *commission* [Board] shall be deposited in the State Treasury to the credit of the General Revenue Fund. No claim for traveling expenses or per diem allowance shall be allowed or paid unless the claim be in writing and signed by the claimant under oath.

J. Except as otherwise provided by law, all records of the *commission* [Board] shall be open to inspection by the public during regular office hours.

K. All meetings of the *commission* [Board] shall be open and public.

L. The *commission* [Board] 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* [Board]. The *commission* [Board] shall inform the prospective employer of the status of the applicant's license to engage in the activity he proposes.

M. The *commission* [Board] may adopt such administrative procedures as may be desirable to effect the intent of the provisions of this Section.

N. The *Texas Funeral Service Commission* [State Board of Morticians] is subject to the Texas Sunset Act (Chapter 325, Government Code). Unless continued in existence as provided by that Act, the *commission* [Board] is abolished and this Act expires September 1, 1991.

O. The *commission* [Board] is subject to the open meetings law, Chapter 271, Acts of the 60th Legislature, Regular Session, 1967, as amended (Article 6252-17, Vernon's Texas Civil Statutes), and the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes).

P. If the appropriate standing committees of both houses of the legislature acting under Subsection (g), Section 5, Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), transmit to the *commission* [Board] statements opposing adoption of a rule under that section, the rule may not take effect, or if the rule has already taken effect, the rule is repealed effective on the date the *commission* [Board] receives the committees' statements.

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

A. The *commission* [Board] is hereby authorized and empowered and it shall be its duty to prescribe and maintain a standard of proficiency, 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* [Board] shall examine all applicants for funeral directors' and embalmers' licenses and for apprenticeship licenses and shall issue the proper license to all persons qualified and who meet requirements herein prescribed.

B. The minimum requirements for the issuance of licenses by this *commission* [Board] to practice funeral directing and/or embalming in Texas are as follows, to wit:

1. For a license to practice funeral directing: the applicant shall be found by the *commission* [Board] to be not less than eighteen (18) years of age, a resident of the State of Texas, having graduated from an accredited high school or passed examination prescribed by the Texas Education Agency, having graduated from an accredited school or college of mortuary science approved by this *commission* [Board], having served as an apprentice for at least one (1) year under the personal supervision and instruction of a licensed funeral director and having satisfied the *commission* [Board] through written examination as to his proficiency by examination on the subjects of: (a) the art and

technique of funeral directing; (b) signs of death; (c) the manner by which death may be determined; (d) sanitation; (e) hygiene; (f) mortuary management and mortuary law; (g) business and professional ethics; (h) laws applicable to vital statistics pertaining to dead human bodies; (i) local, state, and federal rules and laws relating to the preparation, transportation, care, and disposition of dead human bodies; and such other subjects as may be taught in a recognized school or college of mortuary science. Not later than the 30th day after the day on which a person completes an examination administered by the *commission* [Board], the *commission* [Board] shall send to the person his examination results. If requested by a person who fails the examination, the *commission* [Board] shall send to the person not later than the 30th day after the day on which the request is received by the *commission* [Board] an analysis of the person's performance on the examination.

2. For a license to practice embalming: the applicant shall have been found by the *commission* [Board] to be not less than eighteen (18) years of age, a resident of the State of Texas, having graduated from an accredited high school or passed examination prescribed by the Texas Education Agency, having graduated from an accredited school or college of mortuary science approved by this *commission* [Board], having served as an apprentice for one (1) year under the personal supervision of a licensed embalmer, and having satisfied the *commission* [Board] as to his proficiency through written and practical examination on the subjects of: (a) anatomy of the human body; (b) the cavities of the human body; (c) the arterial and venous system of the human body; (d) blood and discoloration; (e) bacteriology and hygiene; (f) pathology; (g) chemistry and embalming; (h) arterial and cavity embalming; (i) restorative art; (j) disinfecting; (k) embalming special cases; (l) contagious and infectious diseases; (m) mortuary management; (n) care, preservation, transportation and disposition of dead human bodies; (o) laws applicable to vital statistics pertaining to dead human bodies; (p) sanitary science; (q) local, state, and federal rules and laws relating to the care and disposition of dead human bodies; and such other subjects as may be taught in a recognized school or college of mortuary science. Not later than the 30th day after the day on which a person completes an examination administered by the *commission* [Board], the *commission* [Board] shall send to the person his examination results. If requested in writing by a person who fails the examination, the *commission* [Board] shall send to the person not later than the 30th day after the day on which the request is received by the *commission* [Board] an analysis of the person's performance on the examination.

C. The *commission* [Board] is hereby authorized and empowered and it shall be its duty to approve a course of instruction to be given by any college of mortuary science or recognized school of higher learning that desires to be approved by the *commission* [Board]. And it shall be the duty of the *commission* [Board] to examine and supervise the activities of an accredited school or college of mortuary science so as to insure that said college or school is meeting the requirements of the *commission* [Board].

D. It shall be the duty of the *commission* [Board] to prescribe and supervise the course of instruction received by an apprentice while serving his or her apprenticeship, consistent with the following requirements to establish such an apprenticeship registration procedure:

1. Apprenticeship for embalmer: A license to practice the science of embalming shall not be issued unless and until the applicant therefor has served 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 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* [Board], and possesses such qualification to enter into apprenticeship training, may be registered as an apprentice. 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 registration fee at the time he requests such apprenticeship registration.

(1) An applicant for a license to practice the science of embalming who attains a grade of 70% or higher on the written examination given by the *commission* [Board] upon payment of a registration fee shall be registered as an apprentice within six (6) months of such examination.

(b) Each registered apprentice embalmer shall be issued a certificate of apprenticeship or other means of apprenticeship identification by the *commission* [Board] to be served in the State of Texas. During the period of apprenticeship he shall assist in embalming a minimum of sixty (60) dead human bodies, six (6) of which bodies the apprentice shall embalm after the first six months of the apprenticeship without aid but in the immediate presence and under the personal supervision of an embalmer duly and currently licensed in the State of Texas. No more than two (2) apprentices may receive credit due for work on any one body.

(c) An apprentice embalmer must report within ten (10) days after the end of each month each separate case handled by him or with which he has assisted in handling. Each such report shall be certified by the licensee under whom the apprentice performed his work. 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 he did not embalm at least one (1) case under the direction of a licensed embalmer, a report shall be made to the *commission* [Board] notwithstanding.

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

2. Apprentice for Funeral Director: The term of apprenticeship for a funeral director's license shall be a period of not less than twelve (12) months, and may be served concurrently with apprenticeship for an embalmer's license; however, apprenticeship must be served in twelve (12) consecutive months. A person desiring to become an apprentice funeral director shall make application to the *commission* [Board] on a form provided by the *commission* [Board], and if the *commission* [Board] desires, he shall appear before at least one (1) member of the *commission* [Board], or a designated representative thereof, for approval of his application, subject to review of it by the entire *commission* [Board]. An applicant must be not less than eighteen (18) years of age and have completed the educational requirements prescribed for a funeral director, except an applicant for a funeral director's license may elect to serve a one-year apprenticeship prior to enrolling in a course of study in funeral directing prescribed by the *commission* [Board] and graduating from a school of embalming or college of mortuary science. Time spent as an apprentice while engaged in a prescribed course of study in funeral directing or as a student in a school of embalming or college of mortuary science may not be counted toward the required period of apprenticeship. 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 certificate of apprenticeship registration upon determination by the *commission* [Board] that his qualifications are satisfactory.

(a) An applicant for a funeral director's license and the examination therefor who has not completed one (1) year of apprenticeship prior to enrolling in a school of embalming or college of mortuary science shall be admitted to apprenticeship only in the event he shall have attained a grade of 70% or higher on the written examination given by the *commission* [Board], and the payment of a registration fee, whereupon he shall be registered as an apprentice. Provided, however, an applicant must register as an apprentice within six (6) months of such examination.

(b) An apprentice funeral director must report within ten (10) days after the end of each month each separate case with which he has assisted in handling. Each such report shall be certified to by the licensee under whom the apprentice performed the work. 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 he did not assist a funeral director in handling a funeral, a report shall be made to the *commission* [Board] notwithstanding.

(c) During the course of apprenticeship each apprentice shall assist a licensed funeral director in this state to prepare, other than by embalming, and to make final disposition of

not less than sixty (60) dead human bodies, six (6) of which bodies the apprentice shall handle after the first six months of the apprenticeship. No more than two (2) apprentices may receive credit for work done on any one body.

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

3. Annual renewal apprenticeship certificate: Each certificate of apprenticeship issued by the *commission* [Board] to 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 apprentice of a renewal fee, provided the apprentice has observed the rules and regulations of the *commission* [Board] with respect to his apprenticeship. Notice shall be mailed, during the month of December each year, to each registered apprentice at his last known address, notifying him that the renewal fee is due. If a registered apprentice fails to pay the annual renewal fee by the due date, the *commission* [Board] shall impose a late payment penalty equal in amount to the license renewal fee. ~~If the apprentice is delinquent in payment of the renewal fee and [penalty for more than thirty (30) days, the Board] shall suspend his certificate for nonpayment and [shall] notify such apprentice of such suspension [by registered mail, addressed to his last known address].~~ 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* [Board] shall then cancel such certificate. Provided, however, after an apprentice certificate has been cancelled, the apprentice may apply for reinstatement within eighteen (18) months from the date such apprentice certificate was cancelled and the *commission* [Board] may reinstate said apprentice provided he meets all other requirements of the *commission* [Board] and pays the license fee and a late payment penalty equal in amount to the license fee for the period of the cancellation. A certificate of apprenticeship may not be renewed for more than a total period of five (5) years from the date of its issuance. It is provided that the registration fee of any 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* [Board] may deem advisable upon presentation of proper evidence required by the *commission* [Board]. The *commission* [Board] shall set the renewal fee and the penalty in an amount that is reasonable and necessary for the administration of this Act. *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 apprenticeship examination under Subdivision 1 or 2 of this subsection. The commission may adopt rules relating to the reinstatement of such an apprenticeship certificate.*

3a. The *commission* [Board] 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* [Board] upon entry into apprenticeship: When an apprentice enters the employ of a licensed embalmer or funeral director, he shall immediately notify the *commission* [Board] 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 he will train, and such notification shall be signed by the embalmer or funeral director in each case. If at any time thereafter 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 to such apprentice an affidavit showing the length of time 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* [Board] and made a matter of record, and a copy shall be furnished to the apprentice. The *commission* [Board] shall furnish report forms to be used by each apprentice.

(a) Any apprentice registration shall be cancelled, and the applicant required to re-register, including paying the required fees, for failure to pass the *commission's* [Board's] examination of such apprentice after only part of the apprenticeship has been completed. Provided, however, such applicant shall be given credit for apprenticeship time served under the cancelled license in any new registration.

5. A 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* [Board] for a license accompanying same with an application fee. The license or licenses when issued shall be signed by a majority of the *commission* [Board] 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 the place of business. Every licensed embalmer and/or funeral director who desires to continue his practice shall biennially pay to the Secretary of the said *commission* [Board] a registration fee for the renewal of each funeral director's license and each embalmer's license. Said license shall become due and payable biennially on the *date set by rule of the commission* [31st day of May], and the *commission shall* [Board will] give written notice *not later than the thirtieth (30th) day before that date* [on or before April 1st, of each year] that the license fees are due and payable. If a licensee fails to pay the biennial registration fee by the due date, the *commission* [Board] shall charge the delinquent licensee a late payment penalty equal in amount to the registration fee, and shall suspend the license and notify the licensee [by certified mail, return receipt requested,] of such suspension. If the licensee does not pay the registration fee and penalty before the ninetieth (90th) day after the date on which the *commission* [Board] declared the license suspended, as provided herein, the license shall be automatically cancelled and the *commission* [Board] may thereafter refuse to reinstate the licensee until the applicant has passed a regular examination for license as provided in this Act and has paid the license fee and a late payment penalty equal in amount to the license fee for the period of the cancellation. If any license issued under this Act shall be lost or destroyed, the holder of any such license may present his application for duplicate license to the *commission* [State Board of Morticians], on a form to be prescribed by the *commission* [Board], 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* [State Board of Morticians] shall require, and shall, upon payment of a duplicate license fee, as determined by the *commission* [Board], be granted a duplicate license. The *commission* [Board] shall adopt rules to carry out the biennial licensing system.

1. Any license that has been cancelled, suspended or lapsed for a period of five (5) years or more may be reinstated only after the applicant shall have passed a written and practical examination by the *commission* [Board] on embalming and/or a written examination on funeral directing.

2. The *commission* [Board] by rule shall adopt a system under which licenses expire on various dates during the year. All dates for sending notice regarding payment of fees and dates for license suspension for nonpayment shall be adjusted accordingly. For the year in which the license expiration date is changed, license fees payable [on May 31] shall be prorated on a monthly basis so that each licensee shall pay only that portion of the license fee which is allocable to the number of months during which the license is valid. On renewal of the license on the new expiration date, the total license renewal fee is payable.

3. The *commission* [Board] shall set the application fee, license fee, registration fee, and duplicate license fee in an amount that is reasonable and necessary for the administration of this Act.

F. (1) On a reciprocal basis with other states, countries, or territories the *commission* [Board] may issue, without examination, a license to an applicant who has a

corresponding certificate or license issued by another state, country, or territory having standards for the license that are at least substantially equivalent to those of this state and who pays a reciprocal license fee. The person's application shall be accompanied by an affidavit made by the *Chairman* [~~President~~] or Secretary of the *commission* [~~Board of Mortician Examiners~~] which issued the license, or by a duly constituted registration officer of the state, country, or territory by which the certificate or license was granted, and on which the application for registration in Texas is based, reciting that the accompanying certificate or license has not been cancelled, suspended or revoked, and that the statement of the qualifications made in the application for a license in Texas is true and correct. Applicants for a license under the provisions of this Act shall subscribe to an oath in writing before an officer authorized by law to administer oaths, which shall be a part of such application, stating that the license, certificate, or authority under which the applicant practiced as a funeral director or embalmer in the state, country, or territory from which the applicant removed, was at the time of such removal in full force and effect and not cancelled or suspended or revoked. Said application shall also state that the applicant is the identical person to whom the said certificate, license, or commission was issued, and that no proceeding has been instituted against the applicant for the cancellation, suspension or revocation of such certificate or license in the state, country, or territory in which the same was issued; and that no prosecution is pending against the applicant in any state or federal court for any offense which, under the laws of the State of Texas, is a felony, or is a misdemeanor related to the practice of embalming or funeral directing. The *commission* [~~Board~~] shall set the reciprocal license fee in an amount that is reasonable and necessary for the administration of this Act.

(2) Licenses granted under this subsection shall be on the following basis: Before a license is granted, the applicant shall receive a temporary permit good for one (1) year from date of issuance by the *commission* [~~Board~~]. At the end of one (1) year, the holder of said temporary permit shall again be considered by the *commission* [~~Board~~], and if his application for license has been maintained and he meets all other requirements, the *commission* [~~Board~~] may grant said applicant a license.

H. The *commission* [~~State Board of Morticians~~] may seek appropriate injunctive relief against a funeral establishment, licensed embalmer, or funeral director who fails to comply with any provision of this Act. This Act does not affect any remedy or enforcement power under other laws. *The commission may assess an administrative penalty 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. The commission may assess an administrative penalty and* [~~State Board of Morticians~~] may revoke, suspend, or place on probation any licensed funeral director and/or embalmer, or apprentice and may 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* [~~Board~~] of any license, certificate, or diploma which was illegally or fraudulently obtained, or when fraud or deception has been practiced in passing the examination;
2. Conviction of a crime of the grade of a felony or of a misdemeanor that is 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* [~~Board of Morticians~~] 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, 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 hereunder, or permitting, or allowing another to use his license, or certificate to practice as a funeral director or embalmer in this state;

10. Using profane, indecent or obscene language within the immediate hearing of the family or relatives of a decedent, in proximity to a deceased person whose body has not yet been interred or otherwise disposed of; or the indecent exposure of a dead human body;

11. Taking custody of, 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 two (2) hours to obtain the permission;

11A. Attempting without proper authority to embalm a dead human body 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; or

(B) the raising of any circulatory vessel of the body;

12. Wilfully making any false statement on a certificate of death;

13. Employment directly or indirectly of any 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;

14. Presentation of false certification of work done as an apprentice on apprenticeship records;

15. Unfitness by reason of present drug addiction;

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

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

18. Failure by a funeral director or embalmer to inform customers by a written notice on or near the casket of the different colors in which the three least expensive caskets displayed are available; or failure by the funeral director or embalmer to provide a casket in an available color requested by a customer if the customer has expressed an intent to purchase the casket and if the casket can be obtained from regular commercial suppliers under normal delivery conditions within twelve (12) hours;

19. Performing acts of funeral directing or embalming, as those terms are defined in this Act, which are outside the licensed scope and authority of the licensee;

20. Engaging in fraudulent 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) inform a customer or prospective customer of the availability of a retail price list;
- (B) provide a retail price list to the customer or prospective customer for that person to keep; or
- (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;

23. Failure by any person arranging for funeral services or merchandise to provide each customer a written memorandum 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 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* [~~State Board of Morticians~~], upon request, copies of all price lists, written notices, and memoranda of agreement required by this article for two years after the date of their distribution or signing;

26. Violation of this Act, or of any rule, regulation, or order revoking, suspending, or probating a license issued under this Act; and

27. Dishonest conduct or gross negligence in the practice of embalming or funeral directing that is likely to deceive, defraud, or otherwise injure the public.

1. The *commission* [~~Board~~] may issue such rules and regulations as may be necessary or desirable to effect the intent of the provisions of this Section.

SECTION 4. Subsections A, C, D, E, F, 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:

A. All funeral establishments shall be licensed by the *commission* [~~Board~~]. All licenses shall expire at midnight on September 30th of each year. Funeral establishments created after the effective date of this Act shall apply for a license, and upon satisfaction to the *commission* [~~Board~~] that this Section has been complied with and upon receipt of the licensing fee, an initial license shall be duly issued to such new establishments. Not later than thirty (30) days prior to the expiration date of licenses, the *commission* [~~Board~~] shall cause to be issued notification in writing by mail to each licensed funeral establishment that a renewal fee must be paid not later than September 30th before such license shall be renewed, and upon due receipt of such fees all existing licenses shall be considered automatically renewed. Any establishment which fails to pay its license renewal fee by the due date is subject to a late payment penalty equal in amount to the license renewal fee, and if the delinquency is more than thirty (30) days, the establishment shall not be permitted to operate as a funeral home until it has applied for and has been granted a new license as in the case of original applications and licenses for new funeral establishments. The *commission* [~~Board~~] shall set the funeral establishment license fee, the renewal fee, and the penalty in an amount that is reasonable and necessary for the administration of this Act.

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 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* [~~Board~~] may initiate action against a funeral establishment or in regard to the license of a funeral establishment [~~only~~] 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) Conducting or operating a funeral establishment in a manner which, in the discretion of the *commission* [~~Board~~], after applying contemporary community standards, is found to be offensive to the common conscience and moral standards of the community where the funeral establishment is licensed or where such offensive conduct occurred.

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

(d) Whenever a licensee, apprentice, or any other person, whether 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 licensed personnel for [~~attendance,~~] direction[,] or personal supervision for a "first call" as that term is defined in this Act.

Provided, however, with respect to alleged violations of Subsection D-1(b), (c), (d), and (e), the *commission* [~~Board~~] may not initiate action against a funeral establishment or in regard to the license of a funeral establishment when the ground or grounds of complaint 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.*

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

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

(b) The *commission* [~~Board~~] shall cause an investigation to be made whenever a complaint is filed with or by the *commission* [~~Board~~].

(c) The *commission* [~~Board~~] may *assess an administrative penalty and may* revoke or suspend a funeral establishment or a commercial embalming establishment license or may 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.*

E. Each funeral establishment shall designate to the *commission* [Board] a funeral director in charge, and such funeral director in charge shall be directly responsible for the funeral directing and embalming business of the licensee. Any change or changes in such designation shall be given to the *commission* [Board] promptly.

F. The *commission* [Board] may issue such rules and regulations as shall comply with and shall effect the intent of the provisions of this Section.

G. Any premises on which funeral directing or embalming is practiced shall be open at all times to inspection by any agent of the *commission* [Board] or by any duly authorized agent of the state or of the municipality in which the premises are located. Each licensed funeral establishment shall be thoroughly inspected at least once each year by an agent of the *commission* [Board] or by an agent of the state or a political subdivision thereof whom the *commission* [Board] has authorized to make inspections on its behalf. A report of this annual inspection shall be filed with the *commission* [Board].

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

Sec. 5. RULES AND REGULATIONS. A. The *commission* [Board] may adopt rules and regulations and prescribe forms necessary to administer this Act.

B. Whenever it is provided in this Act that the *commission* [Board] may or shall issue any rules and regulations, such rules and regulations thereunder proposed shall be effective only after due notice and hearing.

SECTION 6. 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. REVOCATION, CANCELLATION OR SUSPENSION OF LICENSES OF FUNERAL DIRECTORS, EMBALMERS AND APPRENTICES. (a) The *commission* [~~State Board of Morticians~~] shall have the right to cancel, revoke, or suspend or place on probation the license of any individual person licensed under this Act as provided by subparagraph H of Section 3 above.

(b) Proceedings under this Section shall be initiated by filing charges with the *commission* [~~State Board of Morticians~~] in writing and under oath. Said charges may be made by any person or persons. The *Chairman of the commission* [~~President of the State Board of Morticians~~] shall set a time and place for hearing. Upon application, the *commission* [Board] may reissue a license to practice as a funeral director or embalmer to a person whose license has been cancelled or suspended, but such application, in the case of cancellation or revocation, shall not be made prior to one (1) year after the cancellation or revocation, and shall be made in such a manner and form as the *commission* [Board] may require.

(c) The *commission* [~~State Board~~] shall have the power to appoint committees from the *commissioners* [~~membership~~]. The [~~duties of any~~] committees [~~appointed from the State Board of Morticians membership~~] 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* [~~State Board of Morticians~~] with respect thereto. The *commission* [~~State Board of Morticians~~] 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* [~~State Board of Morticians~~] 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* [~~State Board of Morticians~~] 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* [Board]. Before entering any order cancelling, suspending, refusing to renew, or revoking a license to practice as a funeral director and/or embalmer, the

commission [Board] shall hold a hearing in accordance with the procedure as set forth in this Act.

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

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

Sec. 6B. CERTIFICATE FOR FOREIGN STUDENTS. Any citizen of a country other than the United States who has completed a full course of mortuary science at a *commission-approved* [Board-approved] college in Texas, may upon application to the *commission* [State Board], and after payment of the same examination fee required of others, be given the *commission* [Board] examinations in either embalming, funeral directing or both, and, upon successfully making the minimum grades required of other applicants, may be awarded a "Certificate of Merit" by the *commission* [Board]. Such certificate shall in no manner authorize a holder thereof to practice embalming and/or funeral directing in this state unless the holder is otherwise licensed as an embalmer and/or funeral director under the provisions of this Act.

SECTION 8. 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 certificate by the *commission* [Board] is entitled to a hearing before the *commission* [Board] 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.

(b) A proceeding conducted by the *commission* [Board] relating to the suspension or revocation of a license 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.

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

Sec. 6D. COMPLAINTS. (a) The *commission* [Board] shall investigate and keep an information file about each complaint received by the *commission* [Board] relating to a funeral director, embalmer, apprentice, or funeral establishment.

(b) The *commission* [Board] shall include in each information file a description of the complaint, the date on which the complaint was filed, the name of the complainant, a description of any information obtained by the *commission* [Board] after investigating the complaint, a description and date of any formal actions taken by the *commission* [Board] relating to the complaint, a description of the current status of the complaint, and other information that the *commission* [Board] considers appropriate.

(c) The *commission* [Board], at least as frequently as quarterly, shall notify the complainant of the status of the complaint until the complaint is finally resolved.

(d) The information file, except for information in the file obtained by the *commission* [Board] after investigating the complaint, is public information. The information obtained after investigating the complaint is not public information.

(e) If a person files a complaint with the *commission* [Board] relating to a licensed funeral director, embalmer, or funeral establishment, the *commission* [Board] 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.

(f) The *commission* [Board] shall employ or contract for the services of one or more persons to investigate complaints of consumer interest and other complaints received by the *commission* [Board]. To serve in this *position in a contractual* capacity, a person must be licensed as a private investigator under state law and must not be subject to regulation under this Act. *To serve in this position as an employee of the commission, a person must meet all requirements for licensure as a private investigator, but is not*

required to obtain a surety bond or liability insurance. A person employed by the commission in this capacity must not be subject to regulation under this Act.

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

Sec. 6E. CONSUMER INFORMATION. (a) The *commission* [~~Board~~] shall prepare information of consumer interest explaining matters relating to funerals, describing the regulatory functions of the *commission* [~~Board~~], and describing the *commission's* [~~Board's~~] procedures by which consumer complaints are filed with and resolved by the *commission* [~~Board~~].

(b) The *commission* [~~Board~~] shall disseminate the information to the general public.

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

Sec. 6F. EX PARTE COMMUNICATIONS. The *commissioners* [~~members~~] and the employees of the *commission* [~~Board~~] are subject to the provisions of the Administrative Procedure and Texas Register Act, as amended (Article 6252-13a, Vernon's Texas Civil Statutes), relating to ex parte communications.

SECTION 12. Chapter 251, Acts of the 53rd Legislature, Regular Session, 1953 (Article 4582b, Vernon's Texas Civil Statutes), is amended by adding Section 6G 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 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 twentieth (20th) day after the day on which the 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. 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) *Not later than the thirtieth (30th) day after the day on which the notice is 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, remit the assessed amount to the commission for*

deposit in an escrow account. 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 day on which the judicial determination becomes final.

(f) Failure to remit the amount of the administrative penalty to the commission within the time provided by Subsection (e) of this section results in a waiver of all legal rights to contest the violation or the amount of the penalty.

(g) An administrative penalty owed under this 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 section shall be deposited in the State Treasury to the credit of the general revenue fund.

SECTION 13. 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* [~~Board~~] 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* [~~State Board of Morticians~~] 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 for appropriate injunctive relief. This Act does not affect a remedy or enforcement power under other laws. Any person who practices as a funeral director, embalmer or apprentice in violation of any provisions of this Act shall be fined not less than Fifty Dollars (\$50) nor more than Five Hundred Dollars (\$500) or shall be imprisoned in the county jail for not more than thirty (30) days, or both. Each day of such practice shall constitute a separate offense.

SECTION 14. (a) The name of the State Board of Morticians is changed to the Texas Funeral Service Commission. Any reference in the law to the State Board of Morticians means the Texas Funeral Service Commission.

(b) All appropriations made by the Legislature for the use and benefit of the State Board of Morticians are available for the use and benefit of the Texas Funeral Service Commission.

(c) Before ordering or purchasing new paper or forms to reflect the name change, the Texas Funeral Service Commission shall use all papers and forms that are in the possession of the State Board of Morticians on the effective date of this Act.

SECTION 15. Section 12 of this Act, providing for the assessment of administrative penalties by the Texas Funeral Service Commission, applies only to a violation that occurs on or after the effective date of this Act.

SECTION 16. This Act takes effect September 1, 1987.

SECTION 17. 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 the Senate on February 17, 1987, by a viva-voce vote; April 24, 1987, Senate concurred in House amendments by a viva-voce vote; April 27, 1987, Senate reconsidered vote by which it concurred in House amendments; April 27, 1987, Senate refused to concur in House amendments and requested appointment of Conference Committee; May 7, 1987, House granted request of the Senate; May 19, 1987, Senate adopted Conference Committee Report by a viva-voce vote. Passed the House, with amendments, on April 23, 1987, by a non-record vote; May 7, 1987, House granted request of the Senate for appointment of Conference Committee; May 19, 1987, House adopted Conference Committee Report by a non-record vote.

Approved June 11, 1987.

Effective Sept. 1, 1987.