

Proposal to Repeal Chapter 201 - LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE

The Texas Funeral Service Commission (Commission) proposes the repeal of 201.1-201.19, Chapter 201, Licensing and Enforcement – Practice and Procedure. Pursuant to Texas Government Code, 2001.039, the Commission reviewed this chapter and determined the reasons for initially adopting the rules continue to exist, but extensive rewriting, rearranging and updating are necessary. Therefore, the repeal of this chapter is filed simultaneously with a proposal for public comment of an extensively rewritten, rearranged and updated proposed new Chapter 201.

The review of Chapter 201 by the Commission included several stakeholders' meetings attended by industry members, consumers, continuing education providers and college representatives. Commission staff presented strikethrough and underlined proposals of the rules at those meetings and on the Commission's website throughout the months-long process.

As a result of these meetings and Commission review, the Commission decided to extensively reorder and update the rules to provide more clarity to both industry members and consumers. The Commission determined that because of the extensive rewriting and reordering (with concomitant renumbering), a reviewer of the proposed new Chapter 201 would have difficulty understanding the content of the new Chapter. Therefore, in reordering the rules, the Commission will repeal Chapter 201 in its entirety and propose a new Chapter 201.

In the reordering process, it is important to note the substance of 201.2, 201.3, 201.11, and 201.12 are now included in the proposed Chapter 203, which deals with more substantive rules and procedures of the Commission.

There are no proposed changes to Chapter 201 201.15-201.16 concerning the Commission's Joint Memorandums of Understanding. The rules are being repealed and will be included in the new Chapter 201 as currently written.

The remaining rules will remain in the new Chapter 201 in a reordered format with edits for style consistency, grammar and proper references to statute. Substance changes are discussed in the filing for the proposed Chapter 201.

Janice McCoy, Executive Director, has determined for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

<p>Ms. McCoy has determined there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed.

<p>There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

<p>In addition, Ms. McCoy has determined for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be that funeral service providers and consumers will be informed of new requirements and the Commission's practice and procedure rules will be updated to reflect all recent legislative changes.

<p>The Commission has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, <*>2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

<p>The Commission has determined Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the Commission is not required to complete a takings impact assessment regarding this proposal.

<p>Comments on the proposal may be submitted in writing to Mr. Kyle Smith at PO Box 12217, Capitol Station, Austin, Texas 78711-1440, 512-479-5064 (fax) or electronically to info@tfsc.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

<p>This proposal is made pursuant to Texas Occupations Code, <*>651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work and Texas Government Code, <*>2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

<p>No other statutes, articles, or codes are affected by this section.

- <*> 201.1 *Computation of Time*
- <*> 201.2 *Procedures and Criteria for Inspections of Funeral Establishments*
- <*> 201.3 *Complaints and Investigations*
- <*> 201.4 *Subpoenas*
- <*> 201.5 *Executive Director*
- <*> 201.8 *Procedures for the Petition for Adoption of Rules*
- <*> 201.9 *Preparation and Dissemination of Consumer Information*

- <*> 201.10 *Witness Travel Reimbursement*
- <*> 201.11 *Disciplinary Guidelines*
- <*> 201.12 *Retired Licenses*
- <*> 201.14 *Introduction to Joint Memorandum of Understanding*
- <*> 201.15 *Joint Memorandum of Understanding*
- <*> 201.16 *Joint Memorandum of Understanding with the Texas Department of State Health Services*
- <*> 201.18 *Charges for Providing Copies of Public Information*
- <*> 201.19 *Correspondence and Notice*

The agency certifies legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Proposal to Adopt Chapter 201 - LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE

The Texas Funeral Service Commission (Commission) proposes to adopt a new Chapter 201 (<*> 201.1 – 201.17) Licensing and Enforcement – Practice and Procedure, simultaneously with the repeal of the current Chapter 201. Pursuant to Texas Government Code, <*> 2001.039, the Commission reviewed this chapter and determined the initial reasons for its adoption continue to exist and it should be readopted with amendments. The extensive rewriting, reordering and renumbering necessary to incorporate the needed amendments (including changes made in Texas Occupations Code, Chapter 651) makes it impractical to underline, bracket, and strike language used when commonly amending a rule.

As noted, the proposed adoption of this new Chapter 201 is filed simultaneously with the repeal of the current Chapter 201.

The Commission intends the new rule to improve ease of use for both consumers and industry and to improve efficiencies for agency staff as the new rules are reordered and clarified.

The review of Chapter 201 by the Commission included several stakeholders' meetings attended by industry members, consumers, continuing education providers and college representatives. Commission staff presented strikethrough and underlined proposals of the rules at those meetings and on the Commission's website throughout the months-long process.

As a result of those meetings and Commission review, the Commission decided to extensively reorder and update the rules to provide more clarity to both industry members and consumers. The Commission determined because of the extensive rewriting and reordering (with concomitant renumbering), a reviewer of the proposed new Chapter 201 would have difficulty understanding the content of the new Chapter. Therefore, in reordering the rules, the Commission will repeal Chapter 201 in its entirety and propose a new Chapter 201.

Newly written rules found in the proposed Chapter 201 include <*> 201.1-201.3 which outline the general rights of the Commission. Additionally, the definitions have been moved from the current Chapter 203 to proposed <*> 201.4 and include a definition for SOAH. The language proposed for <*> 201.17 was previously numbered as <*> 203.13(b).

Substantive changes have been made to how the Commission adopts rules in <*> 201.5-201.6 to include a new provision regarding how the Commission will address

negotiated rulemaking and a provision to allow the Executive Director to deny a petition for rule changes if Commissioners cannot review it within 60 days.

<p>The remaining rules are being proposed in the new Chapter 201 with edits for style consistency, grammar and proper references to statute. Additionally the rules have been reordered to provide more clarity to both industry members and consumers.

<p>There are no proposed changes to <*> 201.15-201.16, concerning the Commission's Joint Memorandums of Understanding.

<p>Janice McCoy, Executive Director, has determined for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

<p>Ms. McCoy has determined there will be no adverse economic effect on small businesses or micro-businesses required to comply with these rules as proposed. There is no anticipated economic cost to individuals who are required to comply with these rules as proposed. There is no anticipated negative impact on local employment.

<p>In addition, Ms. McCoy has determined for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be funeral service providers and consumers will be informed of new requirements and the Commission's practice and procedure rules will be updated to reflect all recent legislative changes.

<p>The Commission has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, <*> 2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

<p>The Commission has determined Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

<p>Comments on the proposal may be submitted in writing to Mr. Kyle Smith at PO Box 12217, Capitol Station, Austin, Texas 78711-1440, 512-479-5064 (fax) or electronically to info@tfsc.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

<p>This proposal is made pursuant to Texas Occupations Code, <*> 651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work and Texas Government Code <*> 2001.039,

which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

The rules reflect provisions to comply with statutory provisions under Government Code Chapters 2001 and 2008.

CHAPTER 201 - LICENSING AND ENFORCEMENT--PRACTICE AND PROCEDURE

<*> 201.1- Right of Licensure

The Commission shall establish standards for the licensure of establishments and individuals provided for in Occupations Code, Chapter 651.

<*> 201.2 - Right of Inspection

The Commission shall inspect funeral establishments as provided for in Occupations Code, Chapter 651.

<*> 201.3 - Right of Investigation

The Commission may investigate complaints as provided for in Occupations Code, Chapter 651.

<*> 201.4 - Definitions

The following words and terms, when used in Tex. Admin. Code, Title 22, Part 10, shall have the following meanings:

(1) Advertising--The act of making publicly and generally known: the act of announcing publicly especially by a printed notice, electronic medium or a broadcast.

(2) Alternative container--An unfinished wood box or other non-metal receptacle or enclosure, without ornamentation or a fixed interior lining, which is designed for the encasement of human remains and which is made of fiberboard, pressed-wood, composition materials (with or without an outside covering) or like materials.

(3) At-need--The time of need of funeral services or merchandise when a human being has become deceased.

(4) Cash Advance item--Any item of service or merchandise described to a purchaser as a "cash advance", "accommodation", "cash disbursement" or similar term. A cash advance item is also any item obtained from a third party and paid for by the funeral provider on the purchaser's behalf. Cash advance items may include, but are not limited to: cemetery or crematory services; pallbearers; public transportation; clergy honoraria; flowers; musicians or singers; nurses; obituary notices; gratuities and death certificates.

(5) Casket--A rigid container which is designed for the encasement of human remains and which is usually constructed of wood, metal, fiberglass, plastic, or like material, and ornamented and lined with fabric.

(6) Commission--The Texas Funeral Service Commission.

(7) Cremation--A heating process which incinerates human remains.

(8) Cremation Society--A resource for sharing a common interest of learning about cremation and providing consumers the assistance to locate cremation providers in their local area or outside their local area.

(9) Direct Cremation--Disposition of human remains by cremation, without formal viewing, visitation, or ceremony with the body present.

(10) Funeral ceremony--A service commemorating the deceased with the body present.

- (11) Funeral goods--Goods which are sold or offered for sale directly to the public for use in connection with funeral services. Also referred to as funeral merchandise.
- (12) Funeral provider--Any person, partnership or corporation that sells or offers to sell funeral merchandise and funeral services to the public at need.
- (13) Graveside service--A funeral ceremony with the body present held at the burial site.
- (14) Holding the body hostage--Refusing for any reason to transfer or allow the transfer of a dead human body to the person responsible for making arrangements for final disposition.
- (15) Immediate burial--Disposition of human remains by burial, without formal viewing, visitation, or ceremony with the body present, except for a graveside service.
- (16) Memorial service--A ceremony commemorating the deceased without the body present.
- (17) Morgue--A place where bodies of unidentified persons or those who have died of violence or unknown causes are kept until release for burial or other lawful disposition.
- (18) Person--Any individual, partnership, corporation, association, government or governmental subdivision or agency or other entity.
- (19) Pre-need--Prearranged or prepaid funeral or cemetery services or funeral merchandise, including an alternative container, casket, or outer burial container. The term does not include a grave, marker, monument, tombstone, crypt, niche, plot, or lawn crypt unless it is sold in contemplation of trade for funeral services or funeral merchandise as defined by Finance Code, Chapter 154.
- (20) Refrigeration of body--Maintenance of an unembalmed dead human body at a temperature of 34-40 degrees Fahrenheit.
- (21) SOAH--the State Office of Administrative Hearings.
- (22) Unreasonable Time--The retention of excess funds for a period that exceeds ten days from the time the funds were received by the funeral establishment or its agent.

<*> 201.5 - Procedures for the Petition for Adoption of Rules

(a) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

- (1) Person--Any individual, partnership, corporation, association, governmental subdivision, or public or private organization of any character other than an agency.
- (2) Rule--Any Commission statement of general applicability that implements, interprets, or explains any statute, law, or policy related to the death care industry or describes the procedure or practice requirements of the Commission. The term includes the amendment or repeal of a prior rule. It does not include statements concerning only the internal management or organization of the Commission not affecting private rights or procedures.

(b) Any interested person may submit a petition to the Commission requesting the adoption, amendment, or repeal of a rule. Petitions will be deemed submitted only when actually received in printed form by the Executive Director or his/her designee.

(c) Each petition will clearly state:

- (1) the proposed rule(s), including the specific language recommended;
- (2) a brief explanation of the proposed rule;
- (3) the statutory or other authority under which the rule is proposed to be promulgated, including a concise explanation of the particular statute or other provisions under which the rule is proposed;

- (4) the rationale or justification for the adoption, amendment, or repeal of the rule, including the public benefit to be expected.
- (d) If the petition cannot be placed on the next regularly scheduled Commission agenda within 60 days after receiving the petition, the Executive Director shall automatically deny the petition and notify the petitioner of the denial. A petitioner may waive the 60 day response period in writing.
- (e) When a petition is received that meets the requirements of subsection (c) of this section and is not automatically denied under subsection (d) of this section, the Executive Director will forward the petition to the Presiding Officer of the Commission who will either assign the task to staff or an appropriate group of interested persons to study the petition and make a recommendation to the Commissioners.
- (f) The Commissioners will consider the submission of a petition and may either deny the petition or instruct the Executive Director to initiate rulemaking proceedings in accordance with the Administrative Procedure and Texas Register Act.
- (g) In the event a petition is denied, the Executive Director will advise the interested person who submitted the petition in writing of the denial and will state the reason for the denial by the Commissioners.

<*> 201.6 - Negotiated Rulemaking

The Commission may engage in negotiated rulemaking to assist in the drafting of proposed rules if the Executive Director determines it is advisable to proceed under the procedures established in Government Code, Chapter 2008. If the Executive Director concludes that formal negotiated rulemaking is not advisable, the Commission may nonetheless engage in informal negotiated rulemaking.

<*> 201.7 - Preparation and Dissemination of Consumer Information

- (a) The Commission shall prepare and disseminate to the general public information of consumer interest explaining matters relating to funerals and the funeral industry, describing the regulatory functions of the Commission, and describing the Commission's procedure by which consumer complaints are filed and resolved by the Commission.
- (b) The Commission shall review and revise the information of consumer interest prepared and disseminated by the Commission on a biennial basis.
- (1) Any person or groups of persons may submit in writing any proposal concerning the content and/or the methods of dissemination of information of consumer interest prepared and disseminated by the Commission. Once submitted, such proposal shall become the property of the Commission and will not be returned.
- (2) The Commission shall review any proposals submitted to the Commission in writing concerning the content and/or method of dissemination of information of consumer interest.
- (c) Information of consumer interest prepared and disseminated by the Commission shall be available to the general public through funeral establishments. The Funeral Director in Charge shall prominently display Commission consumer brochures in the public view within the funeral establishment.
- (d) Information of consumer interest prepared and disseminated by the Commission shall also be available, upon request, to individuals and interested organizations or institutions, such as, better business bureaus, hospice groups, consumer groups, libraries, and legislators.

<*> 201.8 - Computation of Time

In computing any period of time prescribed or allowed by Tex. Admin. Code, Title 22, Part 10, by Order of the Commission, or by any applicable statute, the period shall begin on the day after the act, event, or default in controversy and conclude on the last day the act occurred, unless it be a Saturday, Sunday, or legal holiday, in which event the period runs until the end of the next day which is not a Saturday, Sunday, or legal holiday.

<*> 201.9 - Subpoenas

The Executive Director may issue subpoenas and subpoenas duces tecum to compel the attendance of witnesses and the production of books, records, documents and/or other material relevant to the complaint under investigation or pending at SOAH.

<*> 201.10 - Witness Travel Reimbursement

The Commission may reimburse a witness in a SOAH hearing for travel expenses at the rates established by the General Appropriations Act for classified employees of the Commission. All documentation required of classified employees would be required of witnesses in order to be compensated.

<*> 201.11- Correspondence and Notice

(a) All correspondence to an establishment or to a licensee shall be sent to the mailing address of record as reflected on the initial license application or as otherwise provided by the establishment or licensee.

(b) Notice shall be deemed complete upon deposit by the Commission in a postpaid, properly addressed envelope. The correspondence must be placed in a post office or official depository under the care and custody of the United States Postal Service, FedEx, UPS or any other overnight mail delivery service.

<*> 201.12 - Charges for Providing Copies of Public Information

The Commission determines charges for public information in accordance with the rules of the Office of the Attorney General at Tex. Admin. Code, Title 1, Part 3, §70.3.

<*> 201.13 - Executive Director

(a) The Commission shall employ an Executive Director to manage the administrative affairs of the Commission under the Commissioners' discretion.

(b) The Commission may delegate the Commissioners' duties to the Executive Director.

(c) In the event of the Executive Director's absence or if the Executive Director is unable to act, the Presiding Officer of the Commission may designate an Acting Executive Director to perform the Executive Director's duties.

<*> 201.14 - Introduction to Joint Memorandum of Understanding

(a) Occupations Code, §651.159, mandates the Texas Department of Banking, the Texas Funeral Service Commission, and the Texas Department of Insurance to adopt by rule a Joint Memorandum of Understanding (JMOU) relating to prepaid funeral services and transactions that:

- (1) outlines the responsibilities of each agency in regulating these services and transactions;
 - (2) establishes procedures to be used by each agency in referring complaints to one of the other agencies;
 - (3) establishes procedures to be used by each agency in investigating complaints;
 - (4) establishes procedures to be used by each agency in notifying the other agencies of a complaint or of the investigation of a complaint;
 - (5) describes actions the agencies regard as deceptive trade practices;
 - (6) specifies the information the agencies provide consumers and when that information is to be provided; and
 - (7) sets the administrative penalties each agency imposes for violation.
- (b) Any revisions to the JMOU will be adopted by rule by each agency.
- (c) The JMOU entered into by the three agencies is found at §201.15 of this title.
- (d) Nothing in this rule or in §201.15-201.16 of this title shall be construed as prohibiting any agency from taking independent disciplinary action or assessing administrative penalties under their own statute or rules. The JMOU does not limit the authority of any agency, acting in its own capacity under state or federal law, to investigate complaints that fall within that agency's statutory jurisdiction.

<*> 201.15 - Joint Memorandum of Understanding

(a) Pursuant to Occupations Code §651.159, the Texas Funeral Service Commission (herein referred to as the "TFSC"), the Texas Department of Insurance (herein referred to as the "TDI"), and the Texas Department of Banking (herein referred to as the "DOB") hereby adopt the following joint memorandum of understanding (JMOU) relating to prepaid funeral benefits as defined in Finance Code Chapter 154. The TFSC, TDI, and DOB intend this memorandum of understanding to serve as a vehicle to assist the three agencies in their regulatory activities, and to make it as easy as possible for a consumer with a complaint to have the complaint acted upon by all three agencies, where appropriate. In order to accomplish this end, where not statutorily prohibited, the three agencies will share information between the agencies which may not be available to the public generally under the Public Information Act, Government Code Chapter 552. Such information will be transmitted between agencies with the understanding that it is considered confidential, is being furnished to the other agencies in furtherance of their joint responsibilities as state agencies in enforcing their respective statutes, and that it may not be disseminated to others except as required.

(b) Responsibilities of each agency in regulating prepaid funeral benefits:

(1) The Texas Funeral Service Commission is responsible for the following:

(A) licensing funeral directors, embalmers, provisional funeral directors, provisional embalmers, crematory, and funeral establishments. The TFSC may refuse to license a person or establishment which violates Finance Code Chapter 154, under Occupations Code §651.460(b)(3);

(B) taking action under Occupations Code §651.460(b)(3) against any licensee violating Finance Code Chapter 154; and

(C) taking action under Occupations Code §651.460(b)(3) against any funeral director in charge, crematory owner, and/or funeral establishment owner for violations of Finance Code Chapter 154, by persons directly or indirectly connected to the crematory or funeral establishment.

(2) The Texas Department of Banking is responsible for administering Finance Code Chapter 154, and 7 Texas Administrative Code (TAC) Chapter 25, including, but not limited to, the following:

(A) bringing enforcement actions against any person, including licensees of TFSC and TDI, who violate Finance Code Chapter 154 and/or 7 TAC Chapter 25; and

(B) all other actions authorized by Finance Code Chapter 154 and 7 TAC Chapter 25.

(3) The Texas Department of Insurance is responsible for the following:

(A) regulating insurers that issue or propose to issue life insurance policies or annuity contracts which may fund prepaid funeral contracts;

(B) regulating individuals/entities that perform the acts of an insurance agent(s) as defined in the Insurance Code, Articles 21.02 and Chapter 101;

(C) regulating insurance/annuity contracts that may fund prepaid funeral contracts;

(D) regulating unfair trade practices relating to the insurance/annuity contracts which may fund prepaid funeral contracts pursuant to the Insurance Code, Article 21.21;

(E) regulating unfair claims settlement practices by insurance companies pursuant to the Insurance Code Chapter 542.

(c) Procedures used by each agency in exchanging information with or referring complaint to one of the other agencies.

(1) Exchanging information. If, upon receipt of a complaint, or during the course of an investigation, an agency (referred to as the receiving agency) receives any information that might be deemed of value to another of the agencies (referred to as the reviewing agency), the receiving agency will contact the reviewing agency and will forward the relevant information to the reviewing agency at its request.

(2) Referral of complaints for handling. When an agency receiving a complaint refers the complaint to another agency for handling, the receiving agency will contact the complainant in writing informing him or her of the referral, provide contact information to the reviewing agency's processing of the complaint.

(3) Complaint procedures. The three agencies will work together to establish procedures to ensure complaints will be fully resolved by the reviewing agency.

(d) Procedures to be used by each agency in investigating a complaint.

(1) All agencies.

(A) Each agency will develop internal complaint procedures for violations relating to prepaid funeral benefits. The procedures should at a minimum provide for:

(i) identification of necessary data and documents to be obtained from the complainant; and

(ii) such other steps deemed necessary for the agency to perform an adequate and appropriate investigation.

(B) Each agency may assist either of the other agencies with investigations relating to prepaid funeral benefits.

(2) The Texas Funeral Service Commission.

(A) Complaints received by the TFSC will be logged in and investigated as required under Occupations Code, Chapter 651. A complaint about violations of Finance Code Chapter 154 and/or 7 TAC Chapter 25, will be referred to the DOB.

(B) If disciplinary action against a licensee of the TFSC is found to be appropriate, the matter will be referred to the Administrator of Consumer Affairs & Compliance Division of TFSC.

(C) If the complaint involves a matter handled by either the DOB or TDI, as well as a violation of the TFSC statutes or regulations, it will be referred to the appropriate agency for further action. DOB will be primarily responsible for enforcing violations of Finance Code Chapter 154 or 7 TAC Chapter 25. The agencies will coordinate their investigations to avoid duplication of effort.

(3) Texas Department of Banking.

(A) Complaints received by the Special Audits Division will be entered into a complaint log and assigned a reference number. If, after agency notice to the subject of the complaint, the complaint is not resolved, the DOB will investigate.

(B) If disciplinary action against a person who violated Finance Code Chapter 154 or 7 TAC Chapter 25 is appropriate, the matter will be referred to the agency's legal staff.

(C) If the complaint involves a matter handled by either the TDI or TFSC, as well as a violation of Finance Code Chapter 154 or 7 TAC Chapter 25, the DOB will coordinate with those agencies DOB will be primarily responsible for enforcing violations of Finance Code Chapter 154 or 7 TAC Chapter 25.

(D) In the event that the DOB issues an order against a person or entity who is a licensee under the jurisdiction of the TFSC or the TDI, the DOB will send the TFSC and the TDI a copy of the order.

(4) Texas Department of Insurance.

(A) Complaints received by the Consumer Protection Division of TDI will be logged in and investigated, except that if a complaint is solely violations of Finance Code Chapter 154 and/or 7 TAC Chapter 25, the complaint will be referred to the DOB. Other areas of TDI can be called upon for assistance in the investigation of the complaint where appropriate.

(B) If disciplinary or other regulatory action against a licensee of the TDI is found to be appropriate, the matter will be referred to the Compliance Intake Unit of TDI.

(C) If the complaint involves a matter handled by either the DOB or TFSC, as well as a violation of the TDI statutes or regulations, it will be referred to the appropriate agency for further action. DOB will be primarily responsible for enforcing violations of Finance Code Chapter 154 or 7 TAC Chapter 25. The agencies will coordinate their investigations to avoid duplication of effort.

(D) In the event that the Commissioner of Insurance issues an order against a person that also sells, funds or provides prepaid funeral benefits or is subject to the jurisdiction of the DOB or the TFSC, the TDI will send the DOB and the TFSC a copy of the order.

(e) Actions the agencies regard as deceptive trade practices.

(1) The TFSC, the DOB, and the TDI regard as deceptive trade practices those actions found under Business and Commerce Code §17.46.

(2) With respect to trade practices within the business of insurance, the TDI regards as deceptive trade practices those actions found under Insurance Code Chapter 541, other chapters of the Code and the regulations promulgated by the TDI there under.

(f) Information the agencies will provide consumers and when that information is to be provided.

(1) TFSC, DOB, and TDI will continue to provide consumers with the brochure entitled "Facts About Funerals" developed by TFSC (in Spanish and in English). DOB will continue to provide consumers with information on its website in accordance with Finance Code §154.132, including the informational brochure developed in accordance with Finance Code §154.131.

(2) DOB, TDI, and TFSC will maintain their toll free numbers.

(3) TFSC, DOB, and TDI, as state agencies, are subject to the Public Information Act, Government Code Chapter 552. Upon written request, the three agencies will provide consumers with public information which is not exempt from disclosure under that Act. As noted in the preamble to this JMOU, the agencies may, where not statutorily prohibited, exchange information necessary to fulfill their statutory responsibilities among each other, without making such information public information under the Public Information Act.

(g) Administrative penalties each agency imposes for violations.

(1) Texas Funeral Service Commission. The TFSC may impose an administrative penalty, issue a reprimand, or revoke, suspend, or place on probation any licensee who violates Finance Code Chapter 154. TFSC administrative penalties vary based on the violation; TFSC sanctions are imposed under Occupations Code Chapter 651.

(2) Texas Department of Banking. DOB administrative penalties vary based on the violation; DOB sanctions are imposed under Finance Code Chapter 154.

(3) Texas Department of Insurance. TDI administrative penalties vary based on the violation; TDI sanctions are imposed under Insurance Code Chapter 82.

<*> 201.16 - Memorandum of Understanding with the Texas Department of State Health Services

(a) Purpose. The purpose of this section is to implement Texas Occupations Code, Chapter 651, 76th Legislature, 1999, and Health and Safety Code, Chapters 193 and 195. In an effort to better protect the public health, safety and welfare, it is the legislative intent of the laws of the Texas Department of State Health Services (Department) and the Texas Funeral Service Commission (TFSC) to adopt by rule a memorandum of understanding to facilitate cooperation between the agencies by establishing joint procedures and describing the actual duties of each agency for the referral, investigation, and resolution of complaints affecting the administration and enforcement of state laws relating to vital statistics and the licensing of funeral directors and funeral establishments.

(b) Scope.

(1) The Memorandum of Understanding (MOU) includes the respective responsibilities of the Department and the TFSC in regulating any person or entity under the Health and Safety Code, Chapters 193 and 195, concerning the completion and filing of death records.

(2) The Department and the TFSC will implement the cooperative procedure described in this memorandum to refer complaints to the other agency when that complaint falls

within the other agency's jurisdiction or may have an effect on the administration and enforcement of the law for which the other agency is responsible.

(3) The Department and the TFSC will implement the cooperative procedure described in this MOU in order to notify the other agency of violations of Health and Safety Code, Chapters 193 and 195; and Texas Occupations Code, Chapter 651 by funeral directors and funeral establishments, and to assist and encourage funeral directors, embalmers, and funeral establishments to conform their activities relating to the completion and filing of death records.

(4) The MOU does not limit the authority of either agency, acting in its own capacity under state or federal law, to investigate complaints that fall within that agency's statutory jurisdiction.

(c) Definitions. The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Agency--Texas Department of State Health Services or the Texas Funeral Service Commission.

(2) Death record--A report of death, death certificate, or a burial-transit permit, and such other forms as the Texas Department of State Health Services determine to be necessary.

(3) Department--The Texas Department of State Health Services or any local registrar.

(4) Funeral Director--A person who for compensation engages in or conducts, or who holds himself out as being engaged, for compensation, in preparing, other than the 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.

(5) Funeral establishment--A place of business used in the care and preparation for burial or transportation of dead human bodies, or any other 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 is so engaged.

(6) Local registrar--

(A) The justice of the peace is a local registrar of births and deaths in a justice of the peace precinct. However, the duty of registering births and deaths may be transferred to the county clerk if the justice of the peace and the county clerk agree in writing and the agreement is ratified by the commissioners court.

(B) The municipal clerk or secretary is the local registrar of births and deaths in a municipality with a population of 2,500 or more.

(C) If a local registrar fails or refuses to register each birth and death in the district or neglects duties, the county judge or the mayor, as appropriate, shall appoint a new local registrar and shall send the name and mailing address of the appointee to the state registrar.

(7) Person--

(A) includes corporation, organization, government, or governmental subdivision or agency, business trust, estate, trust, partnership, association, and any other legal entity; or

(B) includes individual, corporation, or association where enforcement of Health and Safety Code, Chapter 195 is involved.

(8) Physician--Any individual licensed by the Texas Medical Board to practice medicine in this state.

(d) Delegation of responsibilities. The Department and TFSC agree that the agencies shall have the following responsibilities.

(1) The Department shall have primary responsibility for the enforcement of the laws, rules, and policies governing the collection and maintenance of a system of vital statistics, including the collection and maintenance of death records for the State of Texas. Except as may be otherwise provided by law, the Department shall:

(A) design the format and prescribe the data to be entered on all forms that constitute the death records of the state;

(B) prescribe the rules and procedures to be followed by a funeral director licensed by TFSC in executing his/her responsibility to secure the required data and file the completed death record;

(C) establish rules or policies to determine when a local registrar may accept the filing of a death record by a funeral director or the funeral director's designee and the purposes for which each record may be used, including the filing and uses of a delayed death certificate; and

(D) enforce the provisions of the Health & Safety Code (Code), Chapter 193, in accordance with Chapter 195 of the Code relating to criminal penalties for violations of laws relating to vital statistics. These laws include Chapters 191, 192, and 193 of the Code and rules adopted thereunder. If the state registrar knows or suspects that a funeral director or a funeral establishment has violated the provisions of §195.003 or other provisions of Title 3 of the Code, he or she shall report the violation to the appropriate district or county attorney for prosecution.

(2) The Texas Funeral Service Commission (TFSC) shall have primary responsibility for the enforcement of the laws, rules, and policies governing the licensing of funeral directors, embalmers, funeral and commercial embalming establishments. Except as may be otherwise provided by law, the TFSC has authority:

(A) to inspect a funeral establishment for violations of Chapter 193 of the Code; and

(B) to assess an administrative penalty or to reprimand, revoke, suspend, probate, deny or impose any combination of sanctions against a licensee in accordance with Texas Occupations Code Chapter 651, if the licensee has violated Chapter 193 or 195 of the Code or 25 TAC Chapter 181 of the Department rules;

(3) Referral, investigation, and resolution of complaint.

(A) If the Department receives a complaint that alleges conduct by a funeral director or a funeral establishment that constitutes possible violations of Texas Occupations Code, Chapter 651, or the rules adopted by TFSC under authority of Texas Occupations Code, Chapter 651, the Department may refer the complaint to the TFSC for investigation and disposition; however, if the complaint describes conduct by any person or entity licensed under Texas Occupations Code, Chapter 651 that constitutes possible violations of Chapters 193 and 195 of the Code, the Department shall retain jurisdiction over the subject matter of the complaint, investigate the complaint, and if valid, shall file a complaint with TFSC; or the Department or any local vital statistics registrar may refer the complaint to TFSC for investigation and adjudication.

(B) If TFSC receives a complaint that alleges conduct by any person that constitutes possible violations of Title 3 of the Code, TFSC shall immediately notify the Department of the complaint for any appropriate action by the Department.

(C) If either agency receives a complaint that alleges facts that constitute a violation of any other law, the complaint shall be referred to the appropriate state administrative agency or state or local law enforcement agency.

(D) Each agency shall appoint at least one person to an interagency team that will meet at least biannually and at that time review each unresolved complaint that affects the agencies jointly.

(i) If the complaint has not been referred for investigation and resolution, the team will refer the complaint to the Department, TFSC, or other appropriate state administrative or law enforcement agency, including the State Board of Medical Examiners, or local law enforcement agency.

(ii) If the Department and the TFSC determine that a complaint has been incorrectly referred, they will refer the complaint appropriately.

(E) To the extent allowed by law, each agency shall cooperate and assist the other in the investigation and resolution of complaints. The following actions may be taken where indicated in the other's enforcement actions.

(i) Either agency may request the assistance of the other in the investigation of a complaint.

(ii) Each agency may share information obtained during the complaint investigation with the other agency when the subject matter of the complaint affects both agencies.

(iii) Any information obtained by the TFSC as a result of a complaint investigation is not subject to public disclosure under the Government Code, §552.101, by virtue of Texas Occupations Code, Chapter 651, §651.203, until the case has reached its final disposition.

(iv) Each agency shall make its personnel available to testify in an administrative or judicial proceeding brought on behalf of the other agency, when the personnel has knowledge of information that is material to the subject matter of the proceeding.

(e) Effective date. This section shall become effective on August 1, 1994. The MOU may be amended at any time upon mutual agreement of the agencies and the amendments are effective as to each agency 20 days after the adopted amendments are filed with the Texas Register.

<*> 201.17 - Severability Clause

The provisions of each section of the Rules of the Commission are separate and severable from one another. If any provision is determined to be invalid, it is the Commission's intention that the remaining provisions shall continue in effect.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Proposal to Repeal Chapter 203 – LICENSING AND ENFORCEMENT—SPECIFIC SUBSTANTATIVE RULES

The Texas Funeral Service Commission (Commission) proposes the repeal of 203.1-203.42, Chapter 203, Licensing and Enforcement – Specific Substantive Rules. Pursuant to Texas Government Code, 2001.039, the Commission reviewed this chapter and determined the reasons for initially adopting the rules continue to exist, but that extensive rewriting, rearranging and updating are necessary. Therefore, the repeal of this chapter is filed simultaneously with a proposal for public comment of an extensively rewritten, rearranged and updated proposed new Chapter 203, filed in three separate submissions for each of the proposed Subchapters.

The review of Chapter 203 by the Commission included several stakeholders' meetings attended by industry members, consumers, continuing education providers and college representatives. Commission staff presented strikethrough and underlined proposals of the rules at those meetings and on the Commission's website throughout the months-long process.

As a result of these meetings and Commission review, the Commission decided to extensively reorder and update the rules to provide more clarity to both industry members and consumers. The Commission determined because of the extensive rewriting and reordering (with concomitant renumbering), a reviewer of the proposed new Chapter 203 would have difficulty understanding the content of the new Chapter. Therefore, in reordering the rules, the Commission will repeal Chapter 203 in its entirety and propose a new Chapter 203.

203.1, Definitions, and 203.5, Right of Investigation, are being moved with updates to the newly proposed Chapter 201 as the rules are more general in nature. 203.20, Cash Advance Items, is being repealed in its entirety because it is duplicative with another rule (see proposed 203.46(f)).

The Commission's rules which mirror the Federal Trade Commission's rules (203.7-203.13) can be found in the proposed Chapter 203 at 203.33 and 203.46-203.52. 203.7(b)(6) has been included in its own rule at 203.47. 203.13(c) was deleted as the Commission does not regulate the business of insurance and 203.13(b) was moved to the newly proposed Chapter 201. Otherwise, the FTC rules only have been updated in the proposed Chapter 203 to include minor edits for clarity.

The remaining rules are being proposed to be included in the new Chapter 203 with edits for procedure, style consistency, grammar and proper references to statute.

Additionally the rules have been reordered into Subchapters to provide more clarity to both industry members and consumers.

<p>Janice McCoy, Executive Director, has determined for each year of the first five-year period the repeal is in effect there will be no fiscal implications for state or local government, or local economies.

<p>Ms. McCoy has determined there will be no adverse economic effect on small businesses or micro-businesses required to comply with the repeal as proposed. There is no anticipated economic cost to individuals who are required to comply with the repeal as proposed. There is no anticipated negative impact on local employment.

<p>In addition, Ms. McCoy has determined for each year of the first five-year period the repeal is in effect, the public benefit anticipated as a result of enforcing the repeal will be that funeral service providers and consumers will be informed of new requirements and the Commission's practice and procedure rules will be updated to reflect all recent legislative changes.

<p>The Commission has determined that this proposal is not a "major environmental rule" as defined by Texas Government Code, <*>2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

<p>The Commission has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the Commission is not required to complete a takings impact assessment regarding this proposal.

<p>Comments on the proposal may be submitted in writing to Mr. Kyle Smith at PO Box 12217, Capitol Station, Austin, Texas 78711-1440, 512-479-5064 (fax) or electronically to info@tfsc.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

<p>This proposal is made pursuant to Texas Occupations Code, <*>651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work and Texas Government Code <*>2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

<p>No other statutes, articles, or codes are affected by this section.

<*> 203.1 *Definitions*

<*> 203.2 *Clarification of First Call Definition*

- <*> 203.3 *Funeral Director in Charge*
- <*> 203.4 *Licensure of Funeral Establishments and Commercial Embalming Establishments and Display of License*
- <*>203.5 *Right of Investigation*
- <*>203.6 *Provisional Licensees*
- <*>203.7 *Price Disclosure*
- <*>203.8 *Misrepresentations*
- <*>203.9 *Required Purchase of Funeral Goods or Funeral Services*
- <*>203.10 *Services Provided Without Prior Approval*
- <*>203.11 *Retention of Documents*
- <*>203.12 *Comprehension of Disclosures*
- <*>203.13 *Declaration of Intent*
- <*>203.14 *Display of Funeral Merchandise*
- <*>203.16 *Requirements Relating to Embalming*
- <*>203.17 *Clarification of Other Facilities Necessary in a Preparation Room*
- <*>203.20 *Cash Advance Items*
- <*>203.21 *Presentation of Consumer Brochure*
- <*>203.22 *Required Documentation for Embalming*
- <*>203.23 *Location of Retained Records*
- <*>203.24 *Unprofessional Conduct*
- <*>203.25 *Franchise Tax*
- <*>203.26 *Funeral Directors and Embalmers License Requirements and Procedure*
- <*>203.27 *Military Licensing*
- <*>203.29 *Establishment Names and Advertising*
- <*>203.30 *Continuing Education*
- <*>203.31 *Inspections of Licensed or Registered Facilities*
- <*>203.32 *State Agency Action as Basis for License Suspension, Revocation, or Denial*
- <*>203.33 *Consequences of Criminal Conviction*
- <*>203.35 *Clarification of Establishment Chapel Requirements*
- <*>203.36 *Temporary Operation Authorization--Damaged Establishments*
- <*>203.38 *Reinstatement of Funeral Director and/or Embalmer Licenses*
- <*>203.39 *Embalmer in Charge*
- <*>203.40 *Provisional License; Hardship*
- <*>203.41 *In-Casket Identification*
- <*>203.42 *New License Applications*

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Proposal to Adopt Chapter 203 – LICENSING AND ENFORCEMENT—SPECIFIC SUBSTANTIVE RULES / Subchapter A - Licensing

The Texas Funeral Service Commission (Commission) proposes to adopt a new Chapter 203, Subchapter A, Licensing, (<*> 203.1 – 203.18), Licensing and Enforcement – Specific Substantive Rules, simultaneously with the repeal of the current Chapter 203. Pursuant to Texas Government Code, <*> 2001.039, the Commission reviewed this chapter and determined the initial reasons for its adoption continue and it should be readopted with amendments. The extensive rewriting, reordering and renumbering necessary to incorporate the needed amendments (including changes made in Texas Occupations Code, Chapter 651) makes it impractical to underline, bracket, and strike language used when commonly amending a rule.

As noted, the proposed adoption of this new Chapter 203 is filed simultaneously with the repeal of the current Chapter 203. The new Chapter 203 is filed in three submissions – one for each proposed subchapter.

Chapter 203 is proposed to be reordered in Subchapters to provide more clarity to both industry members and consumers. Subchapter A includes rules relating to Licensing Issues. Subchapter B includes rules relating to Duties of a Funeral Establishment/Licensee and Subchapter C includes rules relating to Enforcement.

The Commission intends the new rules to improve ease of use for both consumers and industry and to improve efficiencies for agency staff as the new rules are reordered and clarified.

The review of Chapter 203 by the Commission included several stakeholders' meetings attended by industry members, consumers, continuing education providers and college representatives. Commission staff presented strikethrough and underlined proposals of the rules at those meetings and on the Commission's website throughout the months-long process.

As a result of those meetings and Commission review, the Commission decided to extensively reorder and update the rules to provide more clarity to both industry members and consumers. The Commission determined because of the extensive rewriting and reordering (with concomitant renumbering), a reviewer of the proposed Chapter 203 would have difficulty understanding the content of the new Chapter. Therefore, in reordering the rules, the Commission will repeal Chapter 203 in its entirety and propose a new Chapter 203, filed in three submissions.

<p>The proposed Subchapter A incorporates the provisions of HB 1219 enacted by the 84th Legislature. The substantive changes related to this legislation can be found in <*>203.5, Provisional License, <*>203.6, Provisional License Case and Reporting Requirements, and <*>203.7, Provisional License Reinstatement and Reapplication. Additionally, the proposed rules require an applicant for a provisional license to take and pass the State Mortuary Law Exam prior to the provisional license being issued.

<p> The proposed Subchapter A incorporates the provisions of SB 807 and SB 1307 enacted by the 84th Legislature. The substantive changes related to this legislation can be found in <*>203.2, Military Licensing, and <*>203.6(h), Provisional License Case and Reporting Requirements.

<p>Chapter 203 rules deleted from the proposed new Chapter include only <*> 203.36(d).

<p>In the reordering process, it is important to note the substance of current <*> 201.2, is now included in the proposed Chapter 203, which deals with more substantive rules and procedures of the commission. The reordered and updated rule can be found at §203.3, Retired/Disabled License (updated to include disabled licensees and not just retired).

<p>Proposed new language to the Commission's rules can be found at <*> 203.1(e), Funeral Director and Embalmer License Requirements and Procedure, <*> 203.4, Reciprocal License; <*>203.9(c), New License Applications, and <*> 203.10, Preparation Room Exemption. These proposals are not found in the current rules of the Commission and are substantive changes to the Commission's rules and are wholly based on provisions found in Texas Occupations Code, Chapter 651.

<p>A change was made to <*> 203.14, State Agency Action as a Basis for License Suspension, Revocation or Denial, to clarify that any licensee, not just establishments, may be subject to administrative action by the Commission for default or delinquency in an obligation to the state. A change was made to <*> 203.16, Consequences of Criminal Conviction, to give the Executive Director authority to enter into an Agreed Order with a person placed on probation and to allow a person denied a license to appeal to SOAH.

<p>A change was made to <*> 203.18, Reissuance of Revoked Funeral Director and/or Embalmer License, to allow Commissioners additional options for compliance from an applicant seeking license reissuance.

<p>The remaining rules are being proposed in the new Chapter 203 with edits for style consistency, grammar and proper references to statute.

<p>The following sections are reserved for expansion: <*> 203.19 and <*> 203.20.

<p>Janice McCoy, Executive Director, has determined for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

<p>Ms. McCoy has determined there will be no adverse economic effect on small businesses or micro-businesses required to comply with these rules as proposed. There is no anticipated economic cost to individuals who are required to comply with these rules as proposed. There is no anticipated negative impact on local employment.

<p>In addition, Ms. McCoy has determined for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be funeral service providers and consumers will be informed of new requirements and the Commission's practice and procedure rules will be updated to reflect all recent legislative changes.

<p>The Commission has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

<p>The Commission has determined Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

<p>Comments on the proposal may be submitted in writing to Mr. Kyle Smith at PO Box 12217, Capitol Station, Austin, Texas 78711-1440, 512-479-5064 (fax) or electronically to info@tfsc.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

<p> This proposal is made pursuant to Texas Occupations Code, <*> 651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work and Texas Government Code <*> 2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

<p> These changes also are made pursuant to Texas Occupations Code Chapter 53 and 55.

CHAPTER 203-LICENSING & ENFORCEMENT—SPECIFIC SUBSTANTIVE RULES
SUBCHAPTER A – LICENSING

<*> 203.1 - Funeral Director and Embalmer License Requirements and Procedure

(a) A person may not engage in funeral directing or embalming in this state without holding a license issued by the Commission, unless the person is a mortuary student acting under the supervision and direction of a licensed funeral director or embalmer.

(b) An applicant for a license shall meet the eligibility requirements of Occupations Code, §651.253

(c) The period of a license is two years beginning on the first day of the licensee's birth month. The initial licensing period may be less than two years.

(d) The licensing fee must be paid before a license is issued. If the initial licensing period is less than two years, the licensing fee shall be prorated.

(e) A person who does not receive a full license by exiting directly from the Commission's provisional license program or reciprocate from another state may apply for full licensure. The person must have been a provisional license holder in Texas no more than 24 months prior to application. The applicant shall complete an application, provide required proof of eligibility, pay an application fee, re-take and pass the State Mortuary Law Examination, and submit to a criminal background check.

(f) Renewal Procedures and Conditions

(1) A license may be renewed prior to its expiration if the licensee has paid the renewal fee and met the continuing education requirements of §203.8 of this title.

(2) A person whose license is expired for 90 days or less, may renew the license by meeting the continuing education requirements of §203.8 of this title and paying a renewal fee that is 1 and 1/2 times the amount of the normal renewal fee.

(3) A person whose license is expired for more than 90 days but less than one year may renew the license by meeting the continuing education requirements of §203.8 of this title and paying a renewal fee that is two times the amount of the normal renewal fee.

(4) A person whose license has been expired for one year or more may reinstate the license by meeting the following requirements:

(A) retaking and passing the State Mortuary Law Examination;

(B) payment of any applicable fees, including a renewal fee that is equal to two times the normally required renewal fee; and

(C) completion of the continuing education requirements of §203.8 of this title.

(5) Notwithstanding subsection (4) of this section, a person whose license has been expired for one year or more may reinstate the license without retaking the applicable examination if the person has been licensed and practicing in another state for the two years preceding the application for reinstatement. The applicant must pay a renewal fee that is equal to two times the normally required renewal fee.

(6) A licensee serving as an active military service member as defined by Occupations Code, Chapter 55, is exempt from the payment of license fees for the duration of the holder's military service or for anytime the Commission considers advisable.

<*> 203.2 - Military Licensing

(a) This subsection applies to a military service member, military veteran or military spouse as defined by Occupations Code, Chapter 55.

(b) The Commission shall issue an expedited license to an applicant described in subsection (a) of this section who:

- (1) holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state; or
- (2) within the five years preceding the application date held a license in this state.

(c) The Executive Director may allow an applicant described under subsection (b) of this section to demonstrate competency by alternative methods in order to meet the requirements for obtaining a particular license issued by the Commission. In lieu of the standard method(s) of demonstrating competency for a particular license, and based on the applicant's circumstances, the alternative methods for demonstrating competency may include any combination of the following as determined by the Commission:

- (A) education;
- (B) continuing education;
- (C) examinations (written and/or practical);
- (D) letters of good standing;
- (E) letters of recommendation;
- (F) work experience; or
- (G) other methods required by the Executive Director.

(d) The Commission shall waive any application or examination fees for an applicant who is

- (1) a military service member or military veteran whose military service, training, or education substantially meets all of the requirements for the license; or
- (2) a military service member, military veteran, or military spouse who holds a current license issued by another jurisdiction that has licensing requirements that are substantially equivalent to the requirements for the license in this state.

<*> 203.3 - Retired/Disabled License

(a) At the time of license renewal, any licensed Funeral Director, Embalmer or dual licensee aged 65 or older will be placed in a Retired, Active status. Upon written application to the Commission, a licensee may be placed in a Retired, Inactive status.

(b) Upon written application to the Commission, any licensed Funeral Director, Embalmer or dual licensee with a disability of 75% or greater will be placed in a Disabled, Active or Disabled, Inactive status. Proof of disability will be required at the time of the application. If the Commission questions the validity of the certification, a certification from a second source may be required. Submission of required documentation does not imply a guarantee of acceptance of documentation or approval of the application.

(c) Any individual holding an inactive license will be subject to disciplinary action if the individual performs any act of funeral directing and/or embalming.

(d) Any individual holding an inactive license may convert at any time to either a Retired, Active or Disabled, Active license upon written notification to the Commission, payment of applicable licensing fees, and meeting the continuing education requirements of §203.8 of this title.

<*> 203.4 -Reciprocal License

(a) A person who holds a funeral director's license or an embalmer's license issued by another state, country or territory may reciprocate the license with the Commission.

(b) Any applicant for a license under this section shall file a sworn application. The application must include the following information:

- (1) a statement the applicant is the person who holds the license, the applicant's license is current and in good standing, and no criminal prosecution is pending against the applicant;
- (2) an affidavit made by the governmental entity or a registration officer of the state, country or territory that issued the license that verifies the license is active and the qualifications provided by the applicant are correct;
- (3) a copy of a certified transcript showing the applicant graduated from an accredited college of mortuary science; and
- (4) any other requirements necessary for licensure under Occupations Code, §651.253.
- (c) An applicant under this section must show that the applicant has practiced for at least
 - (1) one year in a state with license requirements similar to those of the Commission or
 - (2) five years in a state that does not have license requirements similar to those of the Commission.
- (d) All applicants under this section shall sit for the State Mortuary Law Examination administered by the Commission. A passing score of at least 75% is required.
- (e) Each applicant shall submit to a criminal background check. An applicant is not eligible for a license under this section if the applicant has, in the 10 years preceding the date of the application, been finally convicted of a misdemeanor involving moral turpitude or a felony.
- (f) The Executive Director shall waive licensure requirements under Occupations Code, §651.253, if the applicant meets the licensure term under (c)(1) of this section. The Executive Director may waive licensure requirements under Occupations Code, §651.253, if the applicant meets the licensure term under (c)(2) of this section.
- (g) The applicant shall pay a license fee in an amount set by the Commission.

<*> 203.5 - Provisional License

- (a) An applicant for a provisional license must meet the eligibility requirements of Occupations Code, §651.302 and shall submit to a criminal background check. Upon written application, the Commission shall waive the requirements of Occupations Code, §651.302 (a)(2) and (b)(2) for a period not to exceed 12 months to an applicant who is otherwise qualified.
- (b) An applicant who is enrolled in an accredited mortuary college must have the college forward a letter of enrollment prior to a provisional license being issued. A provisional license holder who was granted an education waiver under Occupations Code §651.302(c) must have the college forward a letter of enrollment prior to a provisional licensed being renewed.
- (c) If a school or college of mortuary science loses its accreditation, a student who is enrolled and actively attending classes related to mortuary science will be considered to have graduated from an accredited school or college of mortuary science for the purpose of complying with Occupations Code §651.253, if the student graduates within 12 months of the loss of accreditation.
- (d) A provisional license holder may work only in a funeral establishment or commercial embalming establishment licensed by the Commission. All work must be performed under the direct and personal supervision of a duly licensed funeral director or embalmer, depending on the provisional license.
- (e) The provisional funeral director program may not be served in a commercial embalming establishment.
- (f) A provisional license holder must maintain employment with a funeral establishment or commercial embalming establishment, as applicable, throughout the provisional license period.

A provisional license holder must notify the Commission where he/she is employed and if he/she changes employer. If the license holder is not employed, the Commission will cancel the provisional license.

(g) A provisional license is valid for a term of 12 consecutive months. If a provisional license holder fails to complete the license requirements in the 12 month license period, the holder's license may be renewed for an additional 12 months, for a maximum term of 24 months.

(h) Notwithstanding subsection (f), if a provisional license holder who was granted an education waiver under Occupations Code §651.302(c) fails to complete the license requirements in the 12 month license period, the holder's license may be renewed for an additional 12 months up to two times, for a maximum term of 36 months.

(i) Fees will not be refunded to a provisional license holder who fails to complete the program.

(j) The Commission shall exit a provisional license holder from the program at any time during the license term if the license holder shows he/she has met the eligibility requirements of Occupations Code, §651.253.

(k) Upon the completion of the provisional license program, the provisional license holder shall submit the Commission promulgated Exit Application and all required documentation to the Commission. The Commission shall verify the information received to ensure the provisional licensee has met all requirements. All information submitted is subject to inspection.

(l) Once the Commission confirms licensing requirements have been met, the Commission shall issue to the provisional license holder a written affidavit to be executed by the Funeral Director in Charge or the Embalmer in Charge, as applicable, which attests to the proficiency of the provisional license holder.

(m) Prior to issuing a regular license, the Commission must receive the affidavit described by subsection (l) of this section and the fees required for regular licensure.

(n) Examination Requirements

(1) An applicant for full licensure as a funeral director from the certificate program must pass the Texas State Board Examination as described in Occupations Code, §651.255.

(2) An applicant for full licensure who holds an Associate of Applied Science degree is required to pass either or both of the examinations as described in Occupations Code, §§651.255-651.256.

(3) Prior to being issued a provisional license, an applicant must pass the State Mortuary Law Examination administered by the Commission.

(4) A passing score of at least 75% is required for each examination described in paragraphs (1) - (3) of this subsection.

<*> 203.6 - Provisional License Case and Reporting Requirements

(a) Forty five (45) cases are required for the provisional funeral director license program, at least 10 of which must be complete cases. A complete funeral directing case consists of all major actions from the time of first call through interment or other disposition of the body.

(b) Forty five (45) cases are required for the provisional embalmer license program, at least 10 of which must be complete cases. A complete embalming requires the provisional embalmer to handle all major actions included in §203.32 of this title performed on a particular body.

(c) It is the responsibility of the Funeral Director in Charge or the Embalmer in Charge, whichever is applicable, and the provisional licensee to schedule case work sufficient to fulfill the requirements of the provisional program.

(d) Each case on a case report form shall be certified by the licensee under whom the provisional licensee performed the work. Both the supervising licensee and the provisional licensee are subject to disciplinary action if the information submitted to the Commission is not true and accurate.

(e) The provisional licensee must file with the Funeral Director in Charge or the Embalmer in Charge, whichever is applicable, a report outlining the number of cases performed and the name of the funeral director or embalmer under whom the cases were supervised. If a provisional licensee adds/moves to a new funeral establishment or commercial embalming facility, a separate case report form must be started. If a Funeral Director in Charge or the Embalmer in Charge changes, a separate case report form must be started. All signed case report forms accumulated during the provisional period may be used to verify the total number of cases performed.

(f) Provisional licensees shall retain copies of all case report forms with supporting documentation for two years from the completion date of the provisional program.

(g) Of the 45 required cases, a provisional license holder may include up to 10 cases performed at an accredited mortuary college whether or not the person held a provisional license at the time the cases were performed and if the college certifies to the Commission that the cases were successfully completed.

(h) Case Reporting for Military Provisional Licensees

(1) This subsection applies to an applicant who is military service member or military veteran as defined by Occupations Code, Chapter 55 and does not have an unacceptable criminal history as defined by §203.16(h) of this title.

(2) The Commission shall credit verified military service or training of the applicant described under paragraph (1) of this subsection toward the requirements outlined under this section.

(3) A Joint Services Transcript, or comparable document issued by the United States military, is required to verify military training or education.

<*> 203.7 - Provisional License Reinstatement and Reapplication

(a) A person whose provisional license is cancelled for failure to timely renew the license as described in Occupations Code, §651.305 may apply for reinstatement no later than the date the license would have expired if the license had been timely renewed. The applicant must pay the renewal fee and penalty upon application. The reinstated provisional license has the same expiration date as if the license had been timely renewed.

(b) A person whose provisional license is cancelled for failure to complete the program within the proscribed time may apply for a new provisional license. Casework completed under a previous license may not be counted toward the requirements of the new license unless the applicant petitions the Executive Director for a hardship exemption. The petition must demonstrate the personal situation and reasons why the casework should count. If the Executive Director determines that the previously completed casework should not be counted under the new license, the Executive Director's decision may be appealed, in writing, and the appeal will be considered at the Commission's next regularly scheduled meeting.

<*> 203.8 - Continuing Education

(a) Each person holding an active license and practicing as a funeral director or embalmer in this state is required to participate in continuing education as a condition of license renewal.

(b) The following words and terms, when used in this section, shall have the following meanings, unless the context clearly indicates otherwise.

(1) Approved provider--Any person or organization conducting or sponsoring a specific program of instruction that has been approved by the Commission.

(2) Approved program--A continuing education program activity that has been approved by the Commission. The program shall contribute to the advancement, extension, and enhancement of the professional skills and knowledge of the licensee in the practice of funeral directing and embalming by providing information relative to the funeral service industry and be open to all licensees.

(3) Hour of continuing education--A 50 minute clock hour completed by a licensee in attendance at an approved continuing education program.

(c) Approval of continuing education providers

(1) A person or entity seeking approval as a continuing education provider shall file a completed application on a form provided by the Commission and include the continuing education provider fee and the fee for each course submitted. Governmental agencies are exempt from paying this fee.

(2) National or state funeral industry professional organizations may apply for approval of seminars or other courses of study given during a convention.

(3) An application for approval must be accompanied by a syllabus for each course to be offered which specifies the course objectives, course content and teaching methods to be used, and the number of credit hours each course is requesting to be granted, and a resume and description of the instructor's qualifications.

(4) A provider is not approved until the Commission accepts the application and issues a Provider Number for the provider and a course number for each course offered under that Provider Number. The Commission may refuse to approve a provider's application for any valid reason, as determined by the Commission.

(5) A Provider Number and course number are valid for one year, expiring on December 31st of each year, regardless of when the number was granted.

(d) Responsibilities of approved providers

(1) The provider shall verify attendance at each program and provide a certificate of attendance to each attendee. The certificate of attendance shall contain:

(A) the name of the provider and approval number;

(B) the name of the participant;

(C) the title of the course or program, including the course or program number;

(D) the number of credit hours given;

(E) the date and place the course was held;

(F) the signature of the provider or provider's representative; and

(G) the signature of the attendee.

(2) The provider shall provide a mechanism for evaluation of the program by the participants, to be completed at the time the program concludes.

(3) The provider shall maintain the attendance records and evaluations for a minimum of two years after the course is presented. A copy of the evaluations and/or attendance roster shall be submitted to the Commission upon request.

(4) The provider shall be responsible for ensuring that no licensee receives continuing education credit for time not actually spent attending the program.

(5) The Commission may monitor any continuing education course with or without prior notice.

(e) Credit hours required

(1) Licensed funeral directors and embalmers who actively practice in this state are required to obtain 16 hours of continuing education every two year renewal period. A licensee may receive credit for a course only once during a renewal period.

(2) The following are mandatory continuing education hours and subjects for each renewal period:

(A) Ethics--two credit hours--this course must at least cover principals of right and wrong, the philosophy of morals, and standards of professional behavior.

(B) Law Updates--two credit hours--this course must at least cover the most current versions of Occupations Code, Chapter 651, and the Rules of the Commission.

(C) Vital Statistics Requirements and Regulations--two credit hours--this course must at least cover Health and Safety Code, Chapters 193, 711 – 715, and Tex. Admin. Code, Title 25, Chapter 181.

(3) It is the responsibility of the licensee to track the number of hours accumulated during a licensing period.

(f) The Commission will grant the following credit hours toward the continuing education requirements for license renewal.

(1) One credit hour is given for each hour of participation, except in accredited college courses taken for school credit. Such college courses will be evaluated by the Commission on an individual basis for a certification fee set by the Commission. College hour credit does not count toward the mandatory continuing education outlined in subsection (e)(2) of this section.

(2) A person is eligible for a maximum of five credit hours per renewal period for provisional licensee supervision, regardless of the number of provisional licensees supervised.

(3) A presenter or instructor of approved continuing education is eligible for a maximum of five credit hours per renewal period for instruction, regardless of the number of times the course is presented.

(4) All required hours may be obtained through independent study, including home study or Internet presentation with a maximum of three hours credit per course.

(5) A person is eligible for a maximum of four credit hours per renewal period for attendance at Commission meetings, provided the licensee signs in and is present during the entirety of the meeting.

(g) Exemptions, waivers, reactivation, and conversion

(1) An individual whose renewal date is 12 months or less following initial licensure is not required to obtain continuing education hours prior to renewal of the license. An individual whose renewal date is more than 12 months following first licensure is required to complete the mandatory continuing education outlined in subsection (e)(2) of this section.

(2) Individuals licensed in Texas, but not practicing in the state, are required to obtain the mandatory continuing education outlined in subsection (e)(2) of this section. Any individual who returns to practice in this state shall, before the next license renewal

period, meet the continuing education requirements before resuming any funeral directing and/or embalming activities in the state.

(3) Persons in Retired, Inactive or Disabled, Inactive status are exempt from continuing education requirements.

(4) Persons in Retired, Active or Disabled, Active status are required to obtain 10 hours of continuing education, including the mandatory continuing education outlined in subsection (e)(2) of this section.

(5) Persons converting from an inactive status to a Retired, Active or Disabled, Active status shall obtain the continuing education hours required in paragraph (4) of this subsection.

(6) Persons in an active military status are eligible for exemption from the continuing education requirements, upon request. A copy of the active duty orders must be included in the request. Upon release from active duty and return to residency in the state, the individual shall meet the continuing education requirements before the next renewal period after the release and return.

(7) The Commission may allow a licensee to carry over to the next renewal period up to 10 credit hours earned in excess of the continuing education renewal requirements, except for the mandatory continuing education outlined in subsection (e)(2) of this section.

(8) The Executive Director may authorize full or partial hardship exemptions from the requirements of this section based on personal or family circumstances and may require documentation of such circumstances.

(A) The hardship request must be submitted in writing at least 30 days prior to the expiration of the license.

(B) Hardship exemptions will not be granted for consecutive licensing periods.

(h) Failure to comply

(1) The Commission will not renew the license of an individual who fails to obtain the required 16 hours of continuing education, except as provided by paragraph (2) of this subsection.

(2) A noncompliance fee must be paid before a license is eligible for renewal if the individual has not obtained the required 16 hours of continuing education.

(A) The noncompliance fee may only be used in lieu of obtaining the required continuing education for every other biennial renewal period.

(B) The noncompliance fee and allowance for every other renewal period does not eliminate the necessity of obtaining the mandatory continuing education outlined in subsection (e)(2) of this section.

(i) Any licensee receiving or submitting for credit continuing education hours in a fraudulent manner shall be required to obtain all continuing education on site and not online for two consecutive renewal periods and shall be subject to any applicable disciplinary action.

<*> 203.9 - Licensure of Funeral Establishments & Commercial Embalming Establishments

(a) New License Applications

(1) Applications for licensure must be submitted on forms developed by the Commission. Applications shall be accompanied by applicable licensing fees, purchase agreement forms, all price lists, and embalming case report forms to be used, if applicable, which reflect the establishment's name.

(2) The passage of an inspection is mandatory for a new establishment seeking its initial licensure and for previously licensed establishments that have changed physical location.

(3) The license shall be issued to the establishment's owner.

(4) A change of name or physical address requires the submission of a new establishment license application.

(5) A new license will not be issued unless all fees have been paid. Prior to a new license being issued under subsection (4) of this section, any outstanding penalties of the previous establishment, if any, must be paid or the Commission must be in possession of evidence that the applicant is current on a payment plan or that the penalties are the subject of an administrative hearing or judicial review.

(6) A license expires on the last day of the month 12 months from the date of issue.

(b) Renewal Applications

(1) The renewal period of a license is 12 months.

(2) A late renewal fee will be assessed for an application for renewal which has been postmarked after its renewal date.

(3) Establishments may be inspected upon the submission of a renewal application.

(4) A renewal license will not be issued unless all fees and outstanding penalties, if any, have been paid or the Commission's records reflect that the applicant is current on a payment plan or that penalties previously assessed are the subject of an administrative hearing or judicial review.

(5) The Commission may investigate any circumstances involved with the renewal of any license as provided for in Occupations Code, Chapter 651.

(c) A funeral establishment or commercial embalming facility may effect a change of ownership by either submitting a new license application under subsection (a) or by notifying the Commission, on a form prescribed by the Commission, within 30 days. In submitting the form, the new owner must attest to the information contained on the form and must submit any documentation required by the Commission.

(d) The Commission may refuse to issue a new license or to renew an outstanding license or may revoke an establishment's license if it determines that the license application or the change of ownership affidavit contains materially false information or that a person whose individual license to practice funeral directing or embalming is currently suspended or revoked owns the establishment or an interest in the establishment.

<*> 203.10- Preparation Room Exemption

(a) A funeral establishment may request, in writing, the Executive Director exempt a funeral establishment from the requirement of having a preparation room. The Executive Director may grant the request only if the establishment is within 50 miles of another funeral establishment that contains a preparation room and has the same ownership.

(b) The funeral establishment seeking the exemption must attest that no embalming services will be performed at the exempt establishment.

(c) An applicant for an exemption may appeal, in writing, the Executive Director's denial of the request to the Commissioners. The Commissioners' decision is final.

<*> 203.11 - Establishment Names and Advertising

(a) Each application for licensure shall contain the name to be used on the license.

(b) Upon receiving an application for a new establishment license, the Commission shall review establishment names in its database. The Commission shall issue the license in the requested name when all licensing requirements are satisfied, unless the Commission determines that the name is deceptively or substantially similar to the name of another licensed establishment in the same county, metropolitan area, municipality, or service area. In these instances, the Executive Director shall deny a license for a name that is deceptively or substantially similar to the name of another establishment, unless that establishment agrees in writing to the name's use.

(c) An establishment's licensed name may be changed by following the procedure outlined in §203.9 of this title and by satisfying the requirements of subsection (b) of this section.

(d) An applicant for approval of a new or changed name may appeal the Executive Director's denial of the request to the Commissioners. The Commissioners' decision is final.

(e) All advertising on a website controlled by an entity licensed by the Commission must operate as follows:

(1) The licensed name of the entity, or a registered trademark or registered trade name belonging to the licensed entity must appear on the contact information page.

(2) Irrespective of the name on the website, provisions must be made on the website so that an individual who wishes to enter into a funeral-related transaction must not be able to complete such a transaction without openly and apparently dealing with the licensed entity under the licensed name as reflected in the records of the Commission.

(3) All locations advertised shall be licensed by the Commission.

(f) No funeral establishment, commercial embalming establishment, crematory, or cemetery shall advertise in a manner which is false, misleading, or deceptive.

(g) A cremation society's website and any advertising shall be linked with a licensed funeral establishment or licensed crematory establishment. The licensed funeral establishment and its location shall be provided on the website or advertising.

<*> 203.12 - Temporary Operation Authorization - - Damaged Establishments

(a) The Commission may grant a temporary operation authorization to a funeral establishment, commercial embalming facility, or crematory to operate at a temporary location if the licensed location is damaged by fire, flood, or other natural disaster.

(b) The temporary location must meet all the requirements for establishments under Occupations Code, Chapter 651, and the Rules of the Commission.

(c) The application for a temporary operation authorization shall be in writing, shall detail the circumstances which prevent the conduct of business at the licensed location, and shall provide an estimated date by which the licensed location will be made ready for operation.

<*> 203.13 - Franchise Tax

(a) Any taxable entity, as defined under Tax Code, Section 171.0002, contracting with the Commission and/or any taxable entity that is an applicant for a license or permit issued by the agency must certify in writing, on a form provided by the agency, that its right to transact business in Texas is active, that it is exempt from payment of the franchise tax or that it is an out-of-state entity that is not subject to the franchise tax.

(b) The making of a false statement as to franchise tax status on any license or permit application shall be grounds for disciplinary action.

(c) The making of a false statement as to franchise tax status with regards to a state contract shall be grounds for cancellation of the contract at the option of the agency by treating the statement as a material breach of contract.

<*> 203.14 - State Agency Action as a Basis for License Suspension, Revocation or Denial

(a) Any licensed establishment, funeral director or embalmer shall be subject to license revocation or denial of license renewal upon a verified showing by any state agency with statutory authority that such licensee is delinquent or in default of an obligation to, a guarantee by, or an interest protected by the state.

(b) Any licensee subject to action under this section by the Commission shall be afforded an opportunity for a hearing before SOAH in the same manner as other licensees subject to Commission action unless such hearing has been provided under other applicable laws.

<*> 203.15 - Required Notification of Criminal Conviction

(a) An applicant for licensure shall disclose in writing to the Commission any conviction against him or her related to the occupations of funeral directing or embalming as defined by §203.16(h) of this title at the time of application.

(b) A current licensee shall disclose in writing to the Commission any conviction against him or her related to the occupations of funeral directing or embalming as defined by §203.16(h) of this title at the time of renewal or no later than 30 days after judgment in the trial court, whichever date is earlier.

(c) Upon notification of a conviction, the Commission shall request that the person respond by filing information demonstrating why the Commission should not deny the application or take disciplinary action against the person, if already licensed. The response must be filed within 21 days of the date of receipt of notice from the Commission. An applicant for licensure is responsible for filing documentation that will allow the Commission to take action under §203.16 of this title.

<*> 203.16 - Consequences of Criminal Conviction

(a) The Commission may suspend or revoke a license or deny a person from receiving a license on the grounds that the person has been convicted of a felony or misdemeanor that directly relates to the duties and responsibilities of an occupation required to be licensed by Occupations Code, Chapter 651 (Chapter 651).

(b) The Commissioners may place an applicant or licensee who has been convicted of an offense on probation by authorizing the Executive Director to enter into an Agreed Order with the licensee. The Agreed Order shall specify the terms of the probation and the consequences of violating the Order.

(c) If the Commissioners suspend or revoke a license or deny a person from getting a license, the licensee or applicant may appeal that decision to SOAH.

(d) The Commission shall immediately revoke the license of a person who is imprisoned following a felony conviction, felony community supervision revocation, revocation of parole, or revocation of mandatory supervision. Revocations under this subsection are not subject to appeal at SOAH.

(e) A person in prison is ineligible for licensure. Revocation or denial of licensure under this subsection is not subject to appeal at SOAH.

(f) The Commission shall consider the following factors in determining whether a criminal conviction directly relates to an occupation required to be licensed by Chapter 651:

(1) the nature and seriousness of the crime;

(2) the relationship of the crime to the purposes for requiring a license to engage in the occupation;

(3) the extent to which a license might offer an opportunity to engage in further criminal activity of the same type as that in which the person previously had been involved; and

(4) the relationship of the crime to the ability, capacity, or fitness required to perform the duties and discharge the responsibilities of the licensed occupation.

(g) If a person has been convicted of a crime, the Commission shall consider the following in determining a person's fitness to perform the duties and discharge the responsibilities of a Chapter 651 occupation:

(1) the extent and nature of the person's past criminal activity;

(2) the age of the person when the crime was committed;

(3) the amount of time that has elapsed since the person's last criminal activity;

(4) the conduct and work activity of the person before and after the criminal activity;

(5) evidence of the person's rehabilitation or rehabilitative effort while incarcerated or after release;

(6) letters of recommendation from:

(A) prosecutors and law enforcement and correctional officers who prosecuted, arrested, or had custodial responsibility for the person;

(B) the sheriff or chief of police in the community where the person resides; and

(C) any other person in contact with the convicted person; and

(7) evidence that the applicant has:

(A) maintained a record of steady employment;

(B) supported the applicant's dependents;

(C) maintained a record of good conduct; and

(D) paid all outstanding court costs, supervision fees, fines, and restitution ordered in any criminal case in which the applicant has been convicted.

(h) The following crimes are related to the occupations of funeral directing or embalming:

(1) Class B misdemeanors classified by Occupations Code, §651.602:

(A) acting or holding oneself out as a funeral director, embalmer, or provisional license holder without being licensed under Chapter 651 and the Rules of the Commission;

(B) making a first call in a manner that violates Occupations Code, §651.401;

(C) engaging in a funeral practice that violates Chapter 651 or the Rules of the Commission; or

(D) violating Finance Code, Chapter 154, or a rule adopted under that chapter, regardless of whether the Texas Department of Banking or another governmental agency takes action relating to the violation.

(2) The commission of acts within the definition of Abuse of Corpse under Penal Code, §42.08, because those acts indicate a lack of respect for the dead.

(3) The following crimes because the commission of each reflects a lack of respect for human life and dignity or a lack of fitness to practice the occupations:

(A) a misdemeanor or felony offense involving:

(i) murder;

- (ii) assault;
- (iii) burglary;
- (iv) robbery;
- (v) theft;
- (vi) sexual assault;
- (vii) injury to a child;
- (viii) injury to an elderly person;
- (ix) child abuse or neglect;
- (x) tampering with a governmental record;
- (xi) forgery;
- (xii) perjury;
- (xiii) bribery;
- (xiv) harassment;
- (xv) insurance claim fraud; or
- (xvi) mail fraud;

(B) delivery, possession, manufacture, or use of or the dispensing or prescribing a controlled substance, dangerous drug, or narcotic; or
(C) violations of the Penal Code, Titles 4, 5, 7, 9, and 10, which indicate an inability or tendency for the person to be unable to perform as a licensee or to be unfit for licensure or registration.

<*> 203.17 - Criminal History Evaluation Letter

(a) Prior to submitting an application for licensure, a person may request the Commission issue a criminal history evaluation letter regarding the person's eligibility for a license if the person is enrolled or planning to enroll in an educational program that prepares a person for an initial license.

(b) A person may request a criminal history evaluation letter if he or she has reason to believe the Commission may determine that he or she is ineligible for a license due to a conviction or deferred adjudication for a felony or misdemeanor offense outlined in §203.16(h) of this title. The request must state the basis for the potential ineligibility.

(c) The Commissioners must consider the application for a criminal history evaluation letter at the next regularly scheduled Commission meeting if all requested information is received in a timely manner.

(d) If the Commissioners determine that a ground for ineligibility does not exist, the Commission shall notify the requestor in writing of the Commission's determination of eligibility. The motion for eligibility is subject to the criminal behavior known to the Commission as of the date of the determination. Any future criminal behavior could impact the issuance of a license.

(e) If the Commissioners determine that a ground for ineligibility does exist, the Commission shall notify the requestor in writing of the Commission's determination of ineligibility.

(f) The Commission may charge a person requesting an evaluation under this section a fee. Fees must be in an amount sufficient to cover the cost of administering this section.

(g) The Commissioners may issue a probated license to an applicant who is not ineligible under subsection (d) of this section, but has been convicted of an offense by authorizing the Executive Director to enter into an Agreed Order with the licensee. The Agreed Order shall specify the terms of the probation and the consequences of violating the Order. Once the terms of the

probated license have been satisfied, the person shall be licensed as any other licensee who had not been on probation.

(h) The Commission shall revoke, without hearing, a probated license if the license holder commits a new offense; commits an act or omission that causes the person's community supervision, mandatory supervision, or parole to be revoked, if applicable; or violates Occupations Code, Chapter 651, or the Rules of the Commission.

(i) A person who is on community supervision, mandatory supervision, or parole and who is issued a license under this section shall provide to the Commission the name and contact information of the probation or parole department to which the person reports. The Commission shall notify the probation or parole department that a license has been issued.

<*> 203.18 -Reissuance of Revoked Funeral Director and/or Embalmer License

(a) A person whose license to practice funeral directing and/or embalming has been revoked may, after at least three years from the effective date of such revocation, petition the Commission for reissuance of the license, unless another time is provided in the revocation order.

(b) The petition shall be in writing.

(c) The Commissioners may grant or deny the petition. If the petition is denied by the Commissioners, a subsequent petition may not be considered by the Commissioners until 12 months have lapsed from the date of denial of the previous petition.

(d) The petitioner or his legal representative may appear before the Commissioners to present the request for reissuance of the license.

(e) The petitioner shall have the burden of showing good cause why the license should be reissued.

(f) In considering a petition for reissuance, the Commissioners may consider the petitioner's:

(1) moral character;

(2) employment history;

(3) status of financial support to his family;

(4) participation in continuing education programs or other methods of staying current with the practice of funeral directing and/or embalming;

(5) criminal history record, including felonies or misdemeanors relating to the practice of funeral directing, embalming and/or moral turpitude;

(6) offers of employment as a funeral director and/or embalmer;

(7) involvement in public service activities in the community;

(8) compliance with the provisions of the Commission Order revoking or canceling the petitioner's license;

(9) compliance with provisions of Occupations Code, Chapter 651, regarding unauthorized practice;

(10) history of acts or actions by any other state and federal regulatory agencies; or

(11) any physical, chemical, emotional, or mental impairment.

(g) In considering a petition for reissuance, the Commissioners may also consider:

(1) the nature and seriousness of the crime for which the petitioner's license was cancelled or revoked;

(2) the length of time since the petitioner's license was cancelled or revoked as a factor in determining whether the time period has been sufficient for the petitioner to have

- rehabilitated himself to be able to practice funeral directing or embalming in a manner consistent with the public health, safety and welfare;
- (3) whether the license was submitted voluntarily for cancellation or revocation at the request of the licensee; or
- (4) other rehabilitative actions taken by the petitioner.
- (h) If the Commissioners grant the petition for reissuance, the petitioner must:
- (1) take and pass the State Mortuary Law Examination;
- (2) pay a fee that is equal to two times the normally required renewal fee; and
- (3) satisfy continuing education requirements of §203.8 of this title. The Commissioners may require the petitioner to complete additional training to assure the petitioner's competency to practice funeral directing and/or embalming.
- (i) The Commissioners may place the licensee on probation for a period of not less than two years by authorizing the Executive Director to enter into an Agreed Order with the licensee. The Agreed Order shall specify the terms of the probation and the consequences of violating the Order.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Proposal to Adopt Chapter 203 – LICENSING AND ENFORCEMENT—SPECIFIC SUBSTANTIVE RULES / Subchapter B – Duties a Funeral Establishment/Licensee

The Texas Funeral Service Commission (Commission) proposes to adopt a new Chapter 203, Subchapter B, Duties of Funeral Establishment/Licensee, (203.21 – 203.35), Licensing and Enforcement – Specific Substantive Rules, simultaneously with the repeal of the current Chapter 203. Pursuant to Texas Government Code, 2001.039, the Commission reviewed this chapter and determined the initial reasons for its adoption continue and it should be readopted with amendments. The extensive rewriting, reordering and renumbering necessary to incorporate the needed amendments (including changes made in Texas Occupations Code, Chapter 651) makes it impractical to underline, bracket, and strike language used when commonly amending a rule.

As noted, the proposed adoption of this new Chapter 203 is filed simultaneously with the repeal of the current Chapter 203. The new Chapter 203 is filed in three submissions – one for each proposed subchapter.

Chapter 203 is proposed to be reordered in Subchapters to provide more clarity to both industry members and consumers. Subchapter A includes rules relating to Licensing Issues. Subchapter B includes rules relating to Duties of a Funeral Establishment/Licensee and Subchapter C includes rules relating to Enforcement.

The Commission intends the new rules to improve ease of use for both consumers and industry and to improve efficiencies for agency staff as the new rules are reordered and clarified.

The review of Chapter 203 by the Commission included several stakeholders' meetings attended by industry members, consumers, continuing education providers and college representatives. Commission staff presented strikethrough and underlined proposals of the rules at those meetings and on the Commission's website throughout the months-long process.

As a result of those meetings and Commission review, the Commission decided to extensively reorder and update the rules to provide more clarity to both industry members and consumers. The Commission determined because of the extensive rewriting and reordering (with concomitant renumbering), a reviewer of the proposed Chapter 203 would have difficulty understanding the content of the new Chapter. Therefore, in reordering the rules, the Commission will repeal Chapter 203 in its entirety and propose a new Chapter 203, filed in three submissions.

<p>Chapter 203 rules that were deleted from the proposed new Chapter include only <*> 203.36(d).

<p>Proposed new language to the Commission's rules can be found at <*> 203.21(d), First Call Definition; <*>203.27, Identification of Person Making Arrangement; <*> 203.29(c), In-Casket Identification, <*> 203.30(a), Interment or Entombment. These proposals are not found in the current rules of the Commission and are substantive changes to the Commission's rules and are wholly based on provisions found in Texas Occupations Code, Chapter 651.

<p>A change was made to <*> 203.24 to clarify that all displayed licenses must be originals issued by the Commission.

<p>One of the Commission's rules that mirror the Federal Trade Commission's rules can be found in the proposed Chapter 203 at <*> 203.34 with the remainder found in the proposed Subchapter C filed concurrently with this submission.

<p>The remaining rules are being proposed in the new Chapter 203 with edits for style consistency, grammar and proper references to statute.

<p>The following sections are being reserved for expansion: <*> 203.36; <*> 203.37; <*> 203.38; and <*> 203.39.

<p>Janice McCoy, Executive Director, has determined for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

<p>Ms. McCoy has determined there will be no adverse economic effect on small businesses or micro-businesses required to comply with these rules as proposed. There is no anticipated economic cost to individuals who are required to comply with these rules as proposed. There is no anticipated negative impact on local employment.

<p>In addition, Ms. McCoy has determined for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be that funeral service providers and consumers will be informed of new requirements and the Commission's practice and procedure rules will be updated to reflect all recent legislative changes..

<p>The Commission has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

<p>The Commission has determined Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

<p>Comments on the proposal may be submitted in writing to Mr. Kyle Smith at PO Box 12217, Capitol Station, Austin, Texas 78711-1440, 512-479-5064 (fax) or electronically to info@tfsc.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

<p>This proposal is made pursuant to Texas Occupations Code, <*> 651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work and Texas Government Code <*> 2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

CHAPTER 203-LICENSING & ENFORCEMENT—SPECIFIC SUBSTANTIVE RULES SUBCHAPTER B – DUTIES OF A FUNERAL ESTABLISHMENT/LICENSEE

<*> 203.21 - First Call Definition

(a) First Call is the beginning of the relationship between the consumer and the licensed funeral director acting on behalf of a licensed funeral establishment to prepare the body for burial or other disposition. The relationship is initiated by a family member or the person responsible for making arrangements for final disposition.

(b) Transportation of a body sent to a morgue, or a funeral establishment for identification or autopsy at the request of a Justice of the Peace, Medical Examiner, or other official under Code of Criminal Procedure, Chapter 49, does not constitute a First Call. Any expenses or items used specifically for the transportation of a body under this subsection are not items of choice for the consumer, including storage, and therefore are not the responsibility of the consumer to pay.

(c) Licensed commercial embalming establishments are prohibited from authorizing first calls or dealing directly with the public for services or merchandise. Any removal of a deceased human body by a commercial embalming establishment must be initiated by a licensed funeral establishment prior to the removal. The commercial embalming facility must notate the name of the funeral establishment authorizing the removal on the release form.

(d) Transportation of a body does not constitute a first call if the removal is done at the request of a health care facility or employee. However, if a family member or the person responsible for making arrangements for final disposition is present the provisions of Occupations Code, §651.401, prevail.

<*> 203.22- Funeral Director in Charge

(a) Each licensed funeral establishment must at all times have a designated Funeral Director in Charge, who is ultimately responsible for compliance with all mortuary, health, and vital statistics laws in the funeral establishment. A funeral establishment must designate a Funeral Director in Charge at the time it receives its establishment license, and any time the Funeral Director in Charge changes the funeral establishment must notify the Commission, on a form prescribed by the Commission, within 15 days.

- (b) The Funeral Director in Charge must be generally available in the routine functions of the funeral establishment in order to personally carry out his or her responsibilities.
- (c) The Funeral Director in Charge may be served with administrative process when violations are alleged to have been committed in a funeral establishment.
- (d) An individual may not be designated as the Funeral Director and/or an Embalmer in Charge of more than one establishment unless the additional establishments are under the same ownership and no establishment is more than 100 miles from any other establishment held under the same ownership conditions.
- (e) In order to be designated Funeral Director in Charge of more than one establishment, the licensee must submit a petition to the Commission that clearly explains how each of the criteria in subsection (d) of this section has been met. The Executive Director shall decide whether to grant the petition. The request and decision will be made part of the permanent licensing file. The Executive Director's decision to deny may be appealed, in writing, to the Commissioners, and the appeal will be considered at the Commission's next regularly scheduled meeting.
- (f) If the establishment employs a provisional licensee it is the responsibility of the Funeral Director in Charge and the provisional licensee to schedule case work sufficient for the provisional program. It is the responsibility of the Funeral Director in Charge to ensure that each provisional licensee is properly supervised while performing cases.
- (g) The Funeral Director in Charge shall retain the originals of all provisional license case reports with supporting documentation for two years from the completion date of the provisional program.
- (h) If a provisional licensee leaves the employment of a Funeral Director in Charge, the Funeral Director in Charge must file an affidavit as described in Occupations Code, §651.304(d), within 15 days of employment termination.

<*> 203.23 - Embalmer in Charge

- (a) Each licensed commercial embalming establishment must at all times have a designated Embalmer in Charge, who is ultimately responsible for compliance with all mortuary, health, and vital statistics laws in the commercial embalming establishment. A commercial embalming establishment must designate an Embalmer in Charge at the time it receives its establishment license, and any time the Embalmer in Charge changes the commercial embalming establishment must notify the commission, on a form prescribed by the Commission, within 15 days.
- (b) The Embalmer in Charge must be generally available in the routine functions of the commercial embalming establishment in order to personally carry out his or her responsibilities.
- (c) The Embalmer in Charge may be served with administrative process when violations are alleged to have been committed in a commercial embalming establishment.
- (d) An individual may not be designated as the Embalmer and/or the Funeral Director in Charge of more than one establishment unless the additional establishments are operated as branches or satellites of a primary establishment, all of the establishments are under the same ownership, and no establishment is more than 100 miles from any other establishment held under the same ownership conditions.
- (e) In order to be designated Embalmer in Charge of more than one establishment, the licensee must submit a petition to the Commission that clearly explains how each of the criteria in subsection (d) of this section has been met. The Executive Director shall decide whether to grant the petition. The request and decision will be made part of the permanent licensing file. The Executive Director's decision to deny may be appealed, in writing, to the Commissioners, and the

appeal will be considered at the Commission's next regularly scheduled meeting. The Executive Director shall advise interested parties of the action taken by the Commission in writing.

(f) If the commercial embalming establishment employs a provisional licensee it is the responsibility of the embalmer in charge and the provisional licensee to schedule case work sufficient for the provisional program. It is the responsibility of the embalmer in charge to ensure that each provisional licensee is properly supervised while performing cases.

(g) The Embalmer in Charge shall retain the originals of all provisional license case reports with supporting documentation for two years from the completion date of the provisional program.

(h) If a provisional license holder leaves the employment of an Embalmer in Charge, the Embalmer in Charge must file an affidavit as described in Occupations Code, §651.304(d), within 15 days of employment termination.

<*> 203.24 - Display of License

(a) The funeral establishment license shall be conspicuously displayed in an area of the establishment open and accessible to the general public.

(b) If a license holder is in contact with the public during the course of his or her job, the funeral establishment shall conspicuously display the holder's license in each place of business at which the license holder practices.

(c) If a license holder is not in contact with the public during the course of his or her job, the funeral establishment shall make the license available for inspection in each place of business at which the license holder practices.

(d) A license is conspicuously displayed when it is placed in an area of the funeral establishment generally accessed by a consumer making funeral arrangements.

(e) The displayed license must be an original license issued by the Commission.

<*> 203.25 - Display of Funeral Merchandise

The Commission will approve only those display rooms in licensed funeral establishments which meet the requirements of Occupations Code, Chapter 651, which are designed and utilized to allow the public to make a private inspection and selection of merchandise. Regardless of the type or method of overall merchandise selection used by the licensed funeral establishment, there must be a display of at least two full-size adult caskets one of which must be the lowest priced casket offered for sale by the establishment. The funeral establishment also must display at least three adult caskets that are not required to be full-size:

(1) in a partial panel display; or

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

<*> 203.26 - Presentation of Consumer Brochure

(a) Consumer brochures as promulgated under §201.7 of this title shall be prominently displayed in the public view, offered free of charge for keeping to any person, and presented at the beginning of the arrangement conference for the disposition of a dead body.

(b) Consumer brochures are designed and printed by the Commission and may be copied only when the Commission is unable to furnish the funeral establishment with an ordered supply.

(c) The Commission determines the minimum order size and the fees for the brochures.

<*> 203.27 - Identification of Person Responsible for Making Arrangements

Prior to discussing funeral arrangements, a funeral director should attempt to identify the person responsible for making arrangements for final disposition as outlined by Health and Safety Code, §711.002(a). The written disclosure should list the name of the person and his or her relationship to the deceased.

<*> 203.28 - Establishment Chapel Requirements

All funeral establishments must have a chapel in which funeral services may be conducted. All chapels shall provide, at a minimum:

- (1) seating for 10;
- (2) public access;
- (3) space for the casket; and
- (4) a lectern or a podium.

<*> 203.29 - In-Casket Identification

(a) The inside of each casket must contain a durable, waterproof identification of the deceased person, including the person's name, date of birth, and date of death.

(b) Funeral establishments are exempt from complying with subsection (a) of this section if the deceased, family of the deceased, religious norms or cultural norms oppose such inclusion. A funeral establishment must keep a record of each instance of use of this exemption and on what grounds the exemption was applied.

(c) If a casket is not used for interment, the identification may be placed on the body with written permission from the family.

<*> 203.30 - Interment or Entombment

(a) A funeral director contracted to perform funeral directing services shall be present for the public portion of graveside services unless the graveside services take place outside Texas.

(b) Once the public portion of the graveside service is concluded or if no graveside service is performed, either a funeral director or an agent of the funeral establishment contracted to perform funeral directing services must be present when the casket containing a human body is placed in a grave, crypt or burial vault unless the interment or entombment takes place outside Texas.

<*> 203.31 - Facilities Necessary in a Preparation Room

The Commission will approve only those preparation rooms which meet the requirements of Occupations Code, Chapter 651, and the following minimum standards:

- (1) must be of sufficient size and dimensions to accommodate an operating table, a sink with water connections, and an instrument table, cabinet, or shelves:
 - (A) the operating table must have a rust proof metal or porcelain top, with edges raised at least 3/4 inch around the entire table and a drain opening at the lower end;
 - (B) the sink must have hot and cold running water and drain freely;
 - (C) the faucet must be equipped with an aspirator;
- (2) must contain an injection/embalming machine and sufficient supplies and equipment for normal operations;
- (3) must be clean, sanitary, and not used for other purposes;
- (4) must not have defective construction which permits the entrance of rodents;

- (5) must not have evidence of infestation of insects or rodents;
- (6) must be private and have no general passageway through it;
- (7) must be properly ventilated with an exhaust fan that provides at least five room air exchanges per hour;
- (8) must not have unenclosed or public restroom facilities located within the room;
- (9) must have walls which run from floor to ceiling and be covered with tile, or by plaster or sheetrock painted with washable paint;
- (10) must have floors of concrete with a glazed surface, or tiled in order to provide the greatest sanitary condition possible, if tile is used, any grout or joint sealant must be unbroken and intact;
- (11) must have doors, windows, and walls constructed to prevent odors from entering any other part of the building; and
- (12) must have all windows and openings to the outside screened.

<*> 203.32 - Requirements Relating to Embalming

(a) In order to ensure the maximum inhibition of pathogenic organisms in the dead human body, the following minimum standards of performance shall be required of each licensed embalmer in the State of Texas in each instance in which he or she is authorized or required to embalm a dead human body.

(1) Embalming shall be performed only by embalmers licensed by the Commission, in properly equipped and licensed establishments, or in the event of a disaster of major proportions, in facilities designated by a Medical Examiner, Coroner, or state health official. Only three types of people may under certain circumstances assist licensed embalmers in embalming: provisional licensed embalmers under the personal supervision of a licensed embalmer; students who are enrolled in an accredited school of mortuary science working on a case intended toward completion of the student's clinical requirements, under the personal supervision of a licensed embalmer and with written permission to assist the embalmer from a family member or the person responsible for making arrangements for final disposition; and, in the event of a disaster of major proportions and with the prior approval of the Executive Director, embalmers licensed in another state as long as they are working with or under the general supervision of a person licensed as an embalmer in this state.

(2) Embalmers are required to utilize all personal protective equipment required by either OSHA or its corresponding state agency during the embalming procedure.

(3) Clothing and/or personal effects of the decedent shall either be thoroughly disinfected before delivery to any person or discarded in a manner consistent with the disposal of biohazardous material.

(4) The technique utilized to effect eye, mouth, and lip closure shall be any technique accepted as standard in the profession. Regardless of the technique chosen, the embalmer shall be required to achieve the best results possible under prevailing conditions.

(5) The entire body may be thoroughly cleaned before arterial injection and shall be cleaned immediately after the embalming procedure with an antiseptic soap or detergent.

(6) Body orifices (nostrils, mouth, anus, vagina, ear canals, and urethra) open lesions, and other surgical incisions shall be treated with appropriate topical disinfectants either before or immediately after arterial injection. After cavity treatment has been completed, body orifices shall be packed in cotton saturated with a suitable disinfectant of a phenol

coefficient not less than one in cases where purge is evident or is likely to occur and/or when the body is to be transported out of state or by common carrier.

(7) The arterial fluid to be injected shall be one commercially prepared and marketed with its percent of formaldehyde, or other approved substance, by volume (index) clearly marked on the label or in printed material supplied by the manufacturer.

(8) The fluids selected shall be injected into all bodies in such dilutions and at such pressures as the professional experience of the embalmer shall indicate, except that in no instance shall dilute solution contain less than 1.0% formaldehyde, or an approved substance that acts the same as formaldehyde, and as the professional experience of the embalmer indicates, one gallon of dilute solution shall be used for each 50 pounds of body weight. Computation of solution strength is as follows: $C \times V = C' \times V'$, where C = strength of concentrated fluid, V = volume of ounces of concentrated fluid, C' = strength of dilute fluid, and V' = volume of ounces of dilute fluid.

(9) Abdominal and thoracic cavities shall be treated in the following manner.

(A) Liquid, semi-solid, and gaseous contents which can be withdrawn through a trocar shall be aspirated by the use of the highest vacuum pressure attainable.

(B) Concentrated, commercially prepared cavity fluid which is acidic in nature (6.5 pH or lower) and contains at least two preservative chemicals shall be injected and evenly distributed throughout the aspirated cavities. A minimum of 16 ounces of concentrated cavity fluid shall be used in any embalming case in which a minimum of two gallons of arterial solution has been injected.

(C) Should distension and/or purge occur after treatment, aspiration and injection as required shall be repeated as necessary.

(10) The embalmer shall be required to check each body thoroughly after treatment has been completed. Any area not adequately disinfected by arterial and/or cavity treatment shall be injected hypodermically with disinfectant and preservative fluid of maximum results. A disinfectant and preservative medium shall be applied topically in those cases which require further treatment.

(11) On bodies in which the arterial circulation is incomplete or impaired by advance decomposition, burns, trauma, autopsy, or any other cause, the embalmer shall be required to use the hypodermic method to inject all areas which cannot be properly treated through whatever arterial circulation remains intact (if any).

(12) In the event that the procedures in paragraphs (1) - (11) of this subsection leave a dead human body in condition to constitute a high risk of infection to anyone handling the body, the embalmer shall be required to apply to the exterior of the body an appropriate embalming medium in powder or gel form and to enclose the body in a zippered plastic or rubber pouch prior to burial or other disposal.

(13) Dead human bodies donated to the State Anatomical Board shall be embalmed as required by the State Anatomical Board and where conflicting requirements exist, those requirements of the State Anatomical Board shall prevail.

(14) All bodies should be treated in such manner and maintained in such an atmosphere as to avoid infestation by vermin, maggots, ants, and other insects; however, should these conditions occur, the body should be treated with an effective vermicide and/or insecticide to eliminate these conditions.

(15) No licensed establishment or licensed embalmer shall take into its or the embalmer's care any dead human body for embalming without exerting every professional effort, and

employing every possible technique or chemical, to achieve the highest level of disinfecting.

(16) Nothing in this section shall be interpreted to prohibit the use of supplemental or additional procedures or chemicals which are known to and accepted in the funeral service profession and which are not specifically mentioned in this subsection.

(b) Minor variations in these procedures shall be permitted as long as they do not compromise the purpose of this rule as stated in subsection (a) of this section.

(c) All embalming case reports must contain, at a minimum, all the information on the case-report form promulgated by the Commission. Funeral establishments may use other forms, so long as the forms contain all the information on the promulgated form. A case report shall be completed for each embalming procedure not later than the date of disposition of the body which was embalmed. The embalmer shall ensure that all information contained in the case report is correct and legible. The completed form shall be retained for two years following the procedure date. The embalming case report must be completed and signed by the licensed embalmer who performed the embalming procedure.

(d) Nothing in this section shall be interpreted to require embalming if a family member or the person responsible for making arrangements for final disposition does not authorize embalming.

<*> 203.33 - Required Documentation for Embalming

(a) If permission to embalm is oral, the funeral establishment must maintain for two years written documentation of the name of the person authorizing embalming, that person's relationship to the deceased, and the time permission was obtained.

(b) When oral or written permission to embalm cannot be obtained from the person authorized to make funeral arrangements, the funeral establishment must maintain for two years written documentation of the efforts taken as mandated by Occupations Code, §651.457, to obtain permission to embalm.

(c) Custody of Body

(1) In cases where a Medical Examiner or Justice of the Peace has given permission to a funeral establishment to take custody of a body, the receiving funeral establishment may not embalm the body until the person responsible for making arrangements for final disposition has given permission. Nothing in this subsection shall be construed as allowing a funeral establishment to initiate contact with the person authorized to make funeral arrangements.

(2) Health and Safety Code, Chapter 694, authorizes county officials to dispose of unclaimed bodies, and Health and Safety Code, Chapter 691, authorizes the Anatomical Board to receive unclaimed bodies.

(d) Authorization to Embalm Form

(1) If embalming is performed, the Commission promulgated Authorization to Embalm Form must be signed by a family member or the person responsible for making arrangements for final disposition when written authorization is secured.

(2) The Commission's Authorization to Embalm Form may not be altered and must be used in its adopted form. A copy of this form may be obtained from the Commission and may be reproduced by a licensed funeral establishment.

(e) If a mortuary student who is not a provisional licensee is to assist the licensed embalmer, the authorization pursuant to Occupations Code, §651.407, must be in the possession of the funeral

establishment and/or embalmer at the time of the embalming. A copy of the mortuary student authorization shall be retained according to Occupations Code, §651.407.

(f) Nothing in this rule diminishes the requirement of the establishment to abide by the Federal Trade Commission funeral rule regarding embalming disclosures. In the event of a conflict between this rule and the Federal Trade Commission funeral rule, the Federal Trade Commission funeral rule prevails.

<*> 203.34 - Retention of Documents

To prevent the unfair or deceptive acts or practices specified in §203.46 of this title and §203.48 of this title, funeral providers must retain and make available for inspection by Commission officials true and accurate copies of the price lists specified in §§203.46(b)(2)-(5) of this title, as applicable, for at least two years after the date of their last distribution to customers, and a copy of each Purchase Agreement, as required by §203.47 of this title, for at least two years from the date of the arrangements conference.

<*> 203.35 - Location of Retained Records

(a) All records required for retention by Occupations Code, Chapter 651, and Rules of the Commission, will be maintained for a minimum of two years within the physical confines of the licensed establishment where the funeral arrangements were made. The records must be made available to a family member or the person responsible for making arrangements for final disposition during regular business hours. Copies must be provided upon request to the Commission during the course of an investigation or inspection.

(b) Any licensed establishment may submit a petition to the Commission requesting an exemption to the portion of subsection (a) of this section which requires that retained records be kept within the physical confines of the licensed funeral establishment where the funeral arrangements were made.

(c) Each petition will clearly state:

(1) a brief explanation of the problem(s) created by maintaining the records at that location;

(2) the rationale or justification for the granting of the exemption;

(3) the specific remedy requested, including the alternative location selected;

(4) assurances that the Commission will be able to easily access all records by name of the establishment, name of individual, or by date of service.

(d) The Executive Director will grant, deny, or modify the requested relief.

(e) The Executive Director will advise the licensed establishment in writing of the action taken.

(f) Each petition will be considered separately and upon its own merit. When considering the petition, the Executive Director will take into account the proposed geographical location of the records and the licensee's demonstrated ability to substantially comply with the mortuary laws and the rules and regulations of the Commission as demonstrated in prior inspection reports and other documents submitted to the Commission.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

Proposal to Adopt Chapter 203 – LICENSING AND ENFORCEMENT—SPECIFIC SUBSTANTIVE RULES / Subchapter C - Enforcement

The Texas Funeral Service Commission (Commission) proposes to adopt a new Chapter 203, Subchapter C, Enforcement, (203.40 – 203.53), Licensing and Enforcement – Specific Substantive Rules, simultaneously with the repeal of the current Chapter 203. Pursuant to Texas Government Code, 2001.039, the Commission reviewed this chapter and determined the initial reasons for its adoption continue and it should be readopted with amendments. The extensive rewriting, reordering and renumbering necessary to incorporate the needed amendments (including changes made in Texas Occupations Code, Chapter 651) makes it impractical to underline, bracket, and strike language used when commonly amending a rule.

As noted, the proposed adoption of this new Chapter 203 is filed simultaneously with the repeal of the current Chapter 203. The new Chapter 203 is filed in three submissions – one for each proposed subchapter.

Chapter 203 is proposed to be reordered in Subchapters to provide more clarity to both industry members and consumers. Subchapter A includes rules relating to Licensing Issues. Subchapter B includes rules relating to Duties of a Funeral Establishment/Licensee and Subchapter C includes rules relating to Enforcement.

The Commission intends the new rules to improve ease of use for both consumers and industry and to improve efficiencies for agency staff as the new rules are reordered and clarified.

The review of Chapter 203 by the Commission included several stakeholders' meetings attended by industry members, consumers, continuing education providers and college representatives. Commission staff presented strikethrough and underlined proposals of the rules at those meetings and on the Commission's website throughout the months-long process.

As a result of those meetings and Commission review, the Commission decided to extensively reorder and update the rules to provide more clarity to both industry members and consumers. The Commission determined because of the extensive rewriting and reordering (with concomitant renumbering), a reviewer of the proposed Chapter 203 would have difficulty understanding the content of the new Chapter. Therefore, in reordering the rules, the Commission will repeal Chapter 203 in its entirety and propose a new Chapter 203, filed in three submissions.

<p>Old Chapter 203 rules not included in the proposed new Chapter include only <*> 203.36(d).

<p>In the reordering process, it is important to note the substance of current <*> 201.3, 201.11, and 201.12 are now included in the proposed Chapter 203, which deals with more substantive rules and procedures of the commission. The reordered and updated rules can be found at <*> 203.40 Complaints; <*>203.41 Investigations, <*>203.42 Notice and Hearings, <*> 203.43, Administrative Penalties and Sanctions (all four sections updated as noted below); and <*> 203.44 Procedures and Criteria for Inspections of Licensed Establishments (updated to include language from the current <*> 203.31).

<p>Proposed new language to the Commission's rules can be found at <*> 203.45(b)(14) Unprofessional Conduct . This proposal is not found in the current rules of the Commission and is a substantive change to the Commission's rules and is wholly based on provisions found in Texas Occupations Code, Chapter 651.

<p>Major substantive changes to the complaints process and to administrative penalties are found at <*> 203.40-203.43. These changes include a two year time limit on when complaints can be filed and a change in when Commissioners review complaint cases and determine final action on a case. Additionally, the rules provide for a penalty matrix which outlines exact penalties for violations of statute and rules. The penalty matrix includes the new penalty outlined by SB 988 enacted by the 84th Legislature. The matrix is attached to this rules submission as an attachment to the rules and is open to comment and review.

<p>The Commission's rules that mirror the Federal Trade Commission's rules can be found in the proposed Chapter 203 at <*> 203.34 and <*> 203.46-203.52. <*> 203.7(b)(6) has been included in its own rule at <*> 203.47. <*> 203.13(c) was deleted as the Commission does not regulate the business of insurance and <*> 203.13(b) was moved to the newly proposed Chapter 201. Otherwise, the FTC rules only have been updated in the proposed Chapter 203 to include minor edits for clarity.

<p>The remaining rules are being proposed in the new Chapter 203 with edits for style consistency, grammar and proper references to statute.

<p>Janice McCoy, Executive Director, has determined that for each year of the first five-year period these rules are in effect there will be no fiscal implications for state or local government, or local economies.

<p>Ms. McCoy has determined there will be no adverse economic effect on small businesses or micro-businesses required to comply with these rules as proposed. There

is no anticipated economic cost to individuals who are required to comply with these rules as proposed. There is no anticipated negative impact on local employment.

<p>In addition, Ms. McCoy has determined for each year of the first five-year period the rules are in effect, the public benefit anticipated as a result of enforcing the rules will be that funeral service providers and consumers will be informed of new requirements and the Commission's practice and procedure rules will be updated to reflect all recent legislative changes..

<p>The Commission has determined this proposal is not a "major environmental rule" as defined by Texas Government Code, §2001.0225. This proposal is not specifically intended to protect the environment or reduce risks to human health from environmental exposure.

<p>The Commission has determined that Chapter 2007 of the Texas Government Code does not apply to this proposal. Accordingly, the department is not required to complete a takings impact assessment regarding this proposal.

<p>Comments on the proposal may be submitted in writing to Mr. Kyle Smith at PO Box 12217, Capitol Station, Austin, Texas 78711-1440, 512-479-5064 (fax) or electronically to info@tfsc.texas.gov. Comments must be received no later than thirty (30) days from the date of publication of this proposal.

<p>This proposal is made pursuant to Texas Occupations Code, <*> 651.152, which authorizes the Texas Funeral Service Commission to adopt rules considered necessary for carrying out the Commission's work; and Texas Government Code <*> 2001.039, which requires state agencies to review their rules and readopt, readopt with amendments, or repeal a rule as the result of reviewing the rule under this section.

CHAPTER 203-LICENSING & ENFORCEMENT—SPECIFIC SUBSTANTIVE RULES SUBCHAPTER C - ENFORCEMENT

<*> 203.40 - Complaints

(a) Any person may file a written complaint with the Commission concerning alleged violations of any statute over which the Commission has regulatory authority as well as the Rules of the Commission. A written complaint must be filed within two years of the event giving rise to the complaint. Complaints filed after the above stated period will not be accepted by the Commission unless the complainant can show good cause to the Executive Director for the late filing.

(b) The Commission's complaint form provides space for the following information:

(A) the name and business address of the licensee or establishment complained of;

(B) the time and place where the act(s) occurred;

(C) the nature of the act(s) set out in sufficient detail to enable the Commission to investigate the complaint and the licensee or establishment complained of to identify the incident and prepare a response; and

(D) the names, addresses, and telephone numbers of any persons who witnessed the acts.

(c) The complaint form asks the complainant to provide any pertinent contracts, photographs, letters, advertisements or other documents that show evidence of the alleged violation.

(d) All complaints must be in writing, other than complaints alleging conduct which, if true, would constitute an imminent or continuing threat to the public health, safety, or welfare. These latter complaints must be reduced to writing by the Complainant before the conclusion of the investigative process.

<*>203.41 Investigations

(a) Upon receiving a written complaint, the complaint is given a complaint number and assigned to an Investigator for review. The Investigator performs an initial analysis to determine if the Commission has jurisdiction over the alleged violation and whether a violation of a statute or rule may have occurred.

(b) If the Investigator, in consultation with the Staff Attorney, determines that the Commission does not have jurisdiction of the matter or that the complaint does not reflect a violation, the case is administratively closed.

(c) If the Investigator, in consultation with the Staff Attorney, determines that the Commission has jurisdiction of the matter and that the complaint reflects a violation, the Investigator will send a copy of the complaint to the Respondent(s) along with a letter which outlines the alleged violation(s) and requests a written narrative response and relevant documents. The Respondent(s) has 15 days to respond.

(c) In the course of the investigation or upon request of the Staff Attorney, the Investigator may request additional information from the Complainant, the Respondent(s), or any witnesses.

(d) The Investigator will prepare an Investigative Report (Report) for the Staff Attorney's review. The Report must contain the Investigator's findings and any applicable administrative penalties or license sanctions based upon the Administrative Penalties and Sanctions Schedule under §203.43 of this title.

<*>203.42 Notice and Hearings

(a) Upon Staff Attorney approval of an Investigative Report (Report) finding a violation has occurred, the Investigator will send the Respondent(s) a copy of the Report and a letter notifying the Respondent(s) of the Commission's determination to assess an administrative penalty and/or sanction the Respondent's license(s).

(b) The Respondent(s) has 30 days to respond to this correspondence. The Respondent(s) can accept the Commission's determination or can request to settle the case by formal or informal methods. Failure to respond within 30 days waives the right to a hearing and requires payment of the assessed penalty and/or enforcement of the license sanction.

(c) If the Respondent accepts the Commission's determination to assess an administrative penalty and/or license sanction or if a settlement is reached, the Respondent shall pay the penalty or shall enter into an Agreed Order with the Commission which is signed by the Executive Director. Once an Agreed Order is signed or the penalty is paid, the case is closed.

(d) If no resolution is reached as outlined by subsection (c) of this section, the Respondent is sent a Notice of Hearing and Complaint and the Commission sets the case on the SOAH Docket for a hearing before a SOAH Administrative Law Judge (ALJ).

(e) Once the ALJ renders a Proposal for Decision (PFD), the PFD is presented to the Commissioners at the Commission's next regularly scheduled meeting.

(f) The Commissioners accept or modify the PFD by Commission Order.

(g) The Respondent can either accept the Commission's Order, or after exhausting all administrative remedies, the Respondent can appeal the Commission's decision by filing suit for judicial review in accordance with Government Code, Chapter 2001, and Occupations Code §651.555.

(h) All correspondence to the Respondent(s) will be sent by both certified mail and first class mail to the Respondent's address of record on file with the Commission.

(i) The Commission will notify the Complainant of the final disposition of the complaint.

(j) Government Code, §§2001.051-2001.103; Occupations Code §651.506; and SOAH's Rules of Practice and Procedure (Tex. Admin. Code, Title 1, §155) govern hearings held at SOAH.

(k) The Commission's Alternative Dispute Resolution Policy and Procedure Rule, found in §207.1 of this title, and SOAH's Rules of Practice and Procedure, Tex. Admin. Code, Title 1, §155.351, govern ADR with Commission staff and mediation at SOAH.

<*> 203.43 - Administrative Penalties and Sanctions

(a) If a person violates any provision of Occupations Code, Chapter 651; Health & Safety Code, Chapters 193, 361 695, 711, 716; Finance Code Chapter 154; Tex. Admin. Code, Title 22, Part 10; or an order of the Executive Director or Commissioners, proceedings may be instituted to impose administrative penalties, administrative sanctions, or both administrative penalties and sanctions in accordance with the provisions of Occupations Code §§651.5515-651.552.

(b) The Administrative Penalties and Sanctions Schedule published following this section sets penalty limits and ranges by class of offense and number of offenses.

(c) The Commission may negotiate a lower penalty than outlined in the Administrative Penalties and Sanctions Schedule based on the following factors:

(A) Attempts by the licensee to correct or stop the violation;

(B) Number of complaints previously found justified against licensee;

(C) Whether the act was unintentional; and

(C) Other mitigating factors that could warrant a lower penalty.

<*> 203.44 - Procedures and Criteria for Inspections of Licensed Establishments

(a) Inspection Procedures

(1) All licensed funeral establishments, commercial embalming facilities, and crematories shall be inspected at least once every two years.

(2) All inspections shall be unannounced.

(3) The inspector shall review prior inspection reports before inspecting an establishment. If prior reports reveal problems, the inspector shall determine whether the establishment has corrected the previously identified problems or whether a pattern of violations or new violations exist.

(4) Inspectors shall use reasonable efforts to conduct inspections between the hours of 8:00 a.m. and 5:00 p.m., but an establishment is required to be open at all times to

inspections for violations of Occupations Code, Chapter 651, and Health and Safety Code, Chapters 193, 361, 711, 714, 715 and 716.

(5) If an establishment is not open for business and an inspector is unable to contact any employee or owner to open the establishment to conduct the inspection, the inspector shall notify the establishment by mail of the attempted inspection. If an establishment is unavailable for inspection twice during a six month period, the Commission may file a complaint against the establishment, making the establishment subject to an administrative penalty or other action.

(b) Criteria for Risk-Based Inspections

(1) If the Commission previously found violations of Occupations Code, Chapter 651, and Health and Safety Code, Chapters 193, 361, 711, 714, 715 and 716, following a biennial inspection, an establishment shall be inspected annually until it is free of all violations.

(2) Establishments that have received a reprimand or letter of warning, that have been assessed administrative penalties, that have had licenses suspended, or that have received a letter ordering the establishment to cease and desist for violations of Occupations Code, Chapter 651, or Rules of the Commission are subject to inspection at anytime within three years following the date that the Commission's action became final.

(3) If the Commission is in the process of conducting an investigation of an establishment, staff may inspect the establishment for the limited purpose of proving or disproving the validity of the complaint. The scope of inspections under this paragraph shall be limited to matters relating to the subject of the complaint.

<*> 203.45 - Unprofessional Conduct

(a) The Commission may, in its discretion, refuse to issue or renew a license or may fine, revoke, or suspend any license granted by the Commission if the Commission finds that the applicant or licensee has engaged in unprofessional conduct as defined in this section.

(b) For the purpose of this section, unprofessional conduct shall include but not be limited to:

(1) providing funeral goods and services or performing acts of embalming in violation of Occupations Code, Chapter 651, the Rules of the Commission or applicable health and vital statistics laws and rules;

(2) refusing or failing to keep, maintain or furnish any record or information required by law or rule, including a failure to timely submit any documentation requested during the course of a Commission investigation;

(3) operating a funeral establishment in an unsanitary manner;

(4) failing to practice funeral directing or embalming in a manner consistent with the public health or welfare;

(5) obstructing a Commission employee in the lawful performance of such employee's duties of enforcing Occupations Code, Chapter 651, or the Rules of the Commission;

(6) copying, retaining, repeating, or transmitting in any manner the questions contained in any examination administered by the Commission;

(7) physically abusing or threatening to physically abuse a Commission employee during the performance of his lawful duties;

(8) conduct which is willful, flagrant, or shameless or which shows a moral indifference to the standards of the community;

(9) in the practice of funeral directing or embalming, engaging in:

(A) fraud, which means an intentional perversion of truth for the purpose of inducing another in reliance upon it to part with some valuable thing belonging to him, or to surrender a legal right, or to issue a license; a false representation of a matter of fact, whether by words or conduct, by false or misleading allegations, or by concealment of that which should have been disclosed, which deceives or is intended to deceive another;

(B) deceit, which means the assertion, as a fact, of that which is not true by any means whatsoever to deceive or defraud another;

(C) misrepresentation, which means a manifestation by words or other conduct which is a false representation of a matter of fact;

(10) communicating directly or indirectly with a Commissioner during the pendency of a complaint in connection with an issue of fact or law, except upon notice and opportunity for each party to participate;

(11) attempting to influence a complainant or witness in any complaint case to change the nature of the complaint, or withdraw the complaint by means of coercion, harassment, bribery, or by force, or threat of force;

(12) retaliating or threatening to retaliate against a complainant who has filed a complaint with the Commission in good faith;

(13) violating any Texas law or administrative rules governing the transportation, storage, refrigeration, interment, cremation, or disinterment of the dead; or

(14) performing any duties as a licensee in a manner that is dishonest, deceptive, or shows a lack of trustworthiness and integrity.

<*> 203.46 - Price Disclosure

(a) In selling or offering to sell funeral goods or funeral services to the public it is an unfair or deceptive act or practice for a funeral provider to fail to furnish accurate price information disclosing the cost to the purchaser or prospective customer for each of the specific funeral goods and funeral services used in connection with the disposition of deceased human bodies. Such price information must include at least the price of embalming, transportation of remains, use of facilities, caskets, outer burial containers, urns, immediate burials, or direct cremations. Any funeral provider who complies with the preventive requirements in subsection (b) of this section is not engaged in the unfair or deceptive acts or practices defined here.

(b) To prevent these unfair or deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §203.49(b)(1) of this title, funeral providers must:

(1) Telephone price disclosure. Tell persons who ask by telephone about the funeral provider's offerings or prices any accurate information from the price lists described in paragraphs (2) - (5) of this subsection and any other readily available information that reasonably answers the question.

(2) Casket price list.

(A) Give a printed or typewritten price list to people who inquire in person about the offerings or prices of caskets or alternative containers. The funeral provider must offer the list upon beginning discussion of, but in any event before showing caskets. In lieu of a written list, other formats, such as notebooks, brochures, or charts may be used if they contain the same information as would the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make a casket price list available if

the funeral providers place on the general price list, specified in paragraph (5) of this subsection, the information required by this subsection.

(B) The list must contain the effective date and the retail prices of all caskets and alternative containers offered which do not require special ordering, and must include, at a minimum, the following specifications:

i) The type of material that is predominately used in the construction of the merchandise, i.e.:

(I) steel, identified as stainless or by gauge, e.g., 18 gauge;

(II) wood, identified by type, e.g., pecan or cherry;

(III) bronze, described by weight, e.g., 32 oz.;

(IV) copper, described by weight, e.g., 32 oz.; or

(V) other specifically named material, e.g., such as cardboard or corrugated wood;

(ii) The type of sealing feature, e.g., sealer, non-sealer, gasketed, or non-gasketed, if specified on the funeral provider's general price list; and

(iii) The material lining the interior of the casket, e.g., crepe, velvet, satin, twill or silk.

(C) Place on the list, however produced, the name of the funeral provider's place of business and a caption describing the list as a "casket price list."

(3) Outer burial container price list.

(A) Give a printed or typewritten price list to persons who inquire in person about outer burial container offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event before showing the containers. The list must contain at least the retail prices of all outer burial containers offered which do not require special ordering, enough information to identify each container, and the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make an outer burial container price list available if the funeral providers place on the general price list, specified in paragraph (5) of this subsection, the information required by this subsection. The description of an outer burial container under this section must, at a minimum, include the following specifications:

(i) The type of material that is predominantly used in the construction of the merchandise, i.e.:

(I) concrete, specifying type of construction, e.g., liner, box, or vault;

(II) steel, identified as stainless or by gauge, e.g., 12 gauge (or described as galvanized of a particular gauge);

(III) wood;

(IV) bronze or copper, described by weight or gauge, e.g., 32 oz. or 18 gauge; or

(V) other specifically named material; and

(ii) The type of sealing feature, e.g., sealer, non-sealer, gasketed, or non-gasketed, if specified on the funeral establishment price list.

(B) Place on the list, however produced, the name of the funeral provider's place of business, address, and telephone number, and a caption describing the list as an "outer burial container price list."

(4) Urn price list.

(A) Give a printed or typewritten price list to persons who inquire in person about urn offerings or prices. The funeral provider must offer the list upon beginning discussion of, but in any event, before showing the containers. The list must contain at least the retail prices of all urns offered which do not require special ordering, the description of an urn under this section must, at a minimum, include the type of material predominately used in its construction. Bronze urns must be described as sheet bronze or caste bronze, whichever is applicable. The price list must include the effective date for the prices listed. In lieu of a written list, the funeral provider may use other formats, such as notebooks, brochures, or charts, if they contain the same information as the printed or typewritten list, and display it in a clear and conspicuous manner. Provided, however, that funeral providers do not have to make an urn price list available if the funeral providers place on the general price list, specified in paragraph (5) of this subsection, the information required by this subsection.

(B) Place on the list, however produced, the name of the funeral provider's place of business, address and telephone number and a caption describing the list as an "urn price list."

(5) General price list.

(A) Availability of general price list.

(i) Give a printed or typewritten price list for retention to persons who inquire in person about the funeral goods, funeral services or prices of funeral goods or services offered by the funeral provider. The funeral provider must give the list upon beginning discussion of any of the following:

(I) the prices of funeral goods or funeral services;

(II) the overall type of funeral service or disposition; or

(III) specific funeral goods or funeral services offered by the funeral provider.

(ii) The requirement in clause (i) of this subparagraph applies whether the discussion takes place in the funeral home or elsewhere. Provided, however, that when the deceased is removed for transportation to the funeral home, an in-person request at that time for authorization to embalm, required by §203.50(a)(2) of this title, does not, by itself, trigger the requirement to offer the general price list if the provider in seeking prior embalming approval discloses that embalming is not required by law except in certain special cases, if any. Any other discussion during that time about prices or the selection of funeral goods or services triggers the requirement under clause (i) of this subparagraph to give consumers a general price list.

(iii) The list required in clause (i) of this subparagraph must contain at least the following information:

(I) the name, address, and telephone number of the funeral provider's place of business;

(II) a caption describing the list as a "general price list"; and

(III) the effective date for the price list.

(B) Include on the price list, in any order, the retail prices (expressed either as the flat fee, or as the price per hour, mile or other unit of computation) and the other information specified below for at least each of the following items, if offered for sale:

- (i) forwarding of remains to another funeral home, together with a list of the services provided for any quoted price;
 - (ii) receiving remains from another funeral home, together with a list of the services provided for any quoted price;
 - (iii) the price range for the direct cremations offered by the funeral provider, together with:
 - (I) a separate price for a direct cremation where the purchaser provides the container;
 - (II) separate prices for each direct cremation offered including an alternative container; and
 - (III) a description of the services and container (where applicable), included in each price;
 - (iv) the price range for the immediate burials offered by the funeral provider, together with:
 - (I) a separate price for an immediate burial where the purchaser provides the casket;
 - (II) separate prices for each immediate burial offered including a casket or alternative container; and
 - (III) a description of the services and container (where applicable) included in that price;
 - (v) transfer of remains to funeral home;
 - (vi) embalming;
 - (vii) other preparation of the body;
 - (viii) use of facilities and staff for viewing;
 - (ix) use of facilities and staff for funeral ceremony;
 - (x) use of facilities and staff for memorial service;
 - (xi) use of equipment and staff for graveside service;
 - (xii) hearse;
 - (xiii) limousine; and
 - (xiv) filing a claim seeking life insurance proceeds on behalf of the beneficiaries.
- (C) Include on the general price list, in any order, the following information:
- (i) Either of the following:
 - (I) The price range for the caskets offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or
 - (II) The prices of individual caskets, disclosed in the manner specified by paragraph (2)(A) of this subsection; and
 - (ii) Either of the following:
 - (I) The price range for the outer burial containers offered by the funeral provider, together with the statement: "A complete price list will be provided at the funeral home."; or
 - (II) The prices of individual outer burial containers, disclosed in the manner specified by paragraph (3)(A) of this subsection; and
 - (iii) Either of the following:
 - (I) The price for the basic services of funeral director and staff, together with a list of the principal basic services provided for any quoted price

and, if the charge cannot be declined by the purchaser, the statement: "This fee for our basic services will be added to the total cost of the funeral arrangements you select. (This fee is already included in our charges for direct cremations, immediate burials, and forwarding or receiving remains.)" If the charge cannot be declined by the purchaser, the quoted price shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services"; or (II) The following statement: "Please note that a fee of (specify dollar amount) for the use of our basic services is included in the price of our caskets. This same fee shall be added to the total cost of your funeral arrangements if you provide the casket. Our services include (specify)." The fee shall include all charges for the recovery of unallocated funeral provider overhead, and funeral providers may include in the required disclosure the phrase "and overhead" after the word "services." The statement must be placed on the general price list together with the casket price range, required by clause (i)(I) of this subparagraph, or together with the prices of individual caskets, required by clause (i)(II) of this subparagraph.

(iv) If the funeral home charges for processing the insurance claim, that fee shall be disclosed.

(v) If a consumer intends to use the proceeds from an insurance policy to pay for a funeral and the funeral provider requires payment before the proceeds from such policy can be obtained and, if the funeral provider does not provide the service of filing a claim seeking life insurance proceeds on behalf of the beneficiary (or, if the funeral provides the service and the consumer does not wish to utilize the services of the funeral provider), the funeral provider shall include the following statement on the general price list: "Please note that if you utilize a third party to file a claim seeking expedited receipt of life insurance proceeds on behalf of a beneficiary, there will be a fee to be paid associated with the filing of such a claim."

(D) The services fee permitted by subparagraph (C)(iii)(I) or (II) of this paragraph is the only funeral provider fee for services, facilities or unallocated overhead permitted by this part to be non-declinable, unless otherwise required by law.

(6) Funeral providers may give persons any other price information, in any other format, in addition to that required by paragraphs (2) - (5) of this subsection so long as the statement required by §203.47 of this title is provided when required.

<*> 203.47 - Purchase Agreement (Statement of funeral goods and services selected)

(a) Funeral providers must give an itemized written statement for retention to each person who arranges a funeral or other disposition of human remains, at the conclusion of the discussion of arrangements. The Purchase Agreement must list at least the following information:

(1) the funeral goods and funeral services selected by that person and the prices to be paid for each of them, unless there is a discounted package arrangement that itemizes the discount provided by the package arrangement;

(2) specifically itemized cash advance items. (These prices must be given to the extent then known or reasonably ascertainable. If the prices are not known or reasonably ascertainable, a good faith estimate shall be given and a written statement of the actual charges shall be provided before the final bill is paid.);

(3) the total cost of the goods and services selected;

(4) the complete description of all goods purchased as described in §§203.46(2)-(5) of this title.

(b) The information required by this section may be included on any contract, statement, or other document which the funeral provider would otherwise provide at the conclusion of discussion of arrangements.

(c) If a funeral provider's graphically illustrated logo or a bold listing of the logo is included in an obituary, the funeral provider shall list separately the additional cost, if any, related to the inclusion of such logo in the cash advance portion of the Purchase Agreement.

<*> 203.48 - Misrepresentations

(a) Embalming provisions.

(1) In selling or offering to sell funeral goods or funeral services to the public, it is deceptive act or practice for a funeral provider to:

(A) represent that state or local law requires that a deceased person be embalmed when such is not the case; or

(B) fail to disclose that embalming is not required by law except in certain special cases, if any.

(2) To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §203.49(b)(1) of this title and §203.50(a) of this title, funeral providers must:

(A) not represent that a deceased person is required to be embalmed for:

(i) Direct cremation;

(ii) Immediate burial; or

(iii) A closed casket funeral without viewing or visitation when refrigeration is available and when state or local law does not require embalming; and

(B) Place the following disclosure on the general price list, required by §203.46(b)(5) of this title, in immediate conjunction with the price shown for embalming: "Except in certain special cases, embalming is not required by law. Embalming may be necessary, however, if you select certain funeral arrangements, such as a funeral with viewing. If you do not want embalming, you usually have the right to choose an arrangement that does not require you to pay for it, such as direct cremation or immediate burial." The phrase "except in certain special cases" need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require embalming under any circumstances.

(b) Casket for cremation provisions.

(1) In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(A) represent that state or local law requires a casket for direct cremations; or

(B) represent that a casket is required for direct cremations.

(2) To prevent these deceptive acts or practices, as well as the unfair or deceptive acts or practices defined in §203.49(a)(1) of this title, funeral providers must place the following disclosure in immediate conjunction with the price range shown for direct cremations: "If you want to arrange a direct cremation, you can use an alternative container. Alternative containers encase the body and can be made of materials like fiberboard or composition materials (with or without an outside covering). The containers we provide are (specify containers)." This disclosure only has to be placed on the general price list if the funeral provider arranges direct cremations.

(c) Outer burial container provisions.

(1) In selling or offering to sell funeral goods and funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(A) represent that state or local laws or regulations, or particular cemeteries, require outer burial containers when such is not the case; or

(B) fail to disclose to persons arranging funerals that state law does not require the purchase of an outer burial container.

(2) To prevent these deceptive acts or practices, funeral providers must place the following disclosure on the outer burial container price list, required by §203.46(b)(3)(A) of this title, or, if the prices of outer burial containers are listed on the general price list, required by §203.46(b)(5) of this title, in immediate conjunction with those prices: "In most areas of the country, state or local law does not require that you buy a container to surround the casket in the grave. However, many cemeteries require that you have such a container so that the grave will not sink in. Either a grave liner or a burial vault will satisfy these requirements." The phrase "in most areas of the country" need not be included in this disclosure if state or local law in the area(s) where the provider does business does not require a container to surround the casket in the grave.

(d) General provisions on legal and cemetery requirements.

(1) In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for funeral providers to represent that federal, state, or local laws, or particular cemeteries or crematories, require the purchase of any funeral goods or funeral services when such is not the case.

(2) To prevent these deceptive acts or practices, as well as the deceptive acts or practices identified in subsections (a)(1), (b)(1), and (c)(1) of this section, funeral providers must identify and briefly describe in writing on the Purchase Agreement required by §203.47 of this title any legal, cemetery, or crematory requirement which the funeral provider represents to persons as compelling the purchase of funeral goods or funeral services for the funeral which that person is arranging.

(e) Provisions on preservative and protective value claims. In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(1) represent that funeral goods or funeral services will delay the natural decomposition of human remains for a long-term or indefinite time; or

(2) represent that funeral goods have protective features or will protect the body from gravesite substances, when such is not the case.

(f) Cash advance provisions.

(1) In selling or offering to sell funeral goods or funeral services to the public, it is a deceptive act or practice for a funeral provider to:

(A) represent that the price charged for a cash advance item is the same as the cost to the funeral provider for the item when such is not the case; or

(B) fail to disclose to persons arranging funerals that the price being charged for a cash advance item is not the same as the cost to the funeral provider for the item when such is the case.

(2) To prevent these deceptive acts or practices:

(A) Funeral providers must place the following sentence in the itemized Purchase Agreement in immediate conjunction with the list of itemized cash advance items required by §203.49 of this title: "We charge you for our services in obtaining: (specify cash advance items)," if the funeral provider makes a charge upon, or receives and retains a rebate, commission or trade or volume discount upon a cash advance item.

<*>203.49 - Required Purchase of Funeral Goods or Funeral Services

(a) Casket for cremation provisions.

(1) In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for a funeral provider, or a crematory, to require that a casket be purchased for direct cremation.

(2) To prevent this unfair or deceptive act or practice, funeral providers must make an alternative container available for direct cremations, if they arrange direct cremations.

(b) Other required purchases of funeral goods or funeral services.

(1) In selling or offering to sell funeral goods or funeral services, it is an unfair or deceptive act or practice for a funeral provider to:

(A) condition the furnishing of any funeral good or funeral service to a person arranging a funeral upon the purchase of any other funeral good or funeral service, except as required by law or as otherwise permitted by this part; or

(B) charge any fee as a condition to furnishing any funeral goods or funeral services to a person arranging a funeral, other than the fees for:

(i) services of funeral director and staff, permitted by §203.46(b)(5)(C)(iii) of this title;

(ii) other funeral services and funeral goods selected by the purchaser; and

(iii) other funeral goods or services required to be purchased, as explained on the itemized statement in accordance with §203.48(d)(2) of this title.

(2) (A) To prevent these unfair or deceptive acts or practices, funeral providers must:

(i) Place the following disclosure in the general price list, immediately above the prices required by §§203.46(b)(5)(B) and (C) of this title: "The goods and services shown below are those we can provide to our customers. You may choose only the items you desire. If legal or other requirements mean you must buy any items you did not specifically ask for, we will explain the reason in writing on the statement we provide describing the funeral goods and services you selected." Provided, however, that if the charge for "services of funeral director and staff" cannot be declined by the purchaser, the statement shall include the sentence: "However, any funeral arrangements you select will include a charge for our basic services" between the second and third sentences of the statement specified above herein. The statement may include the

phrase "and overhead" after the word "services" if the fee includes a charge for the recovery of unallocated funeral provider overhead;

(ii) Place the following disclosure in the Purchase Agreement, required by §203.47 of this title: "Charges are only for those items that you selected or that are required. If we are required by law or by a cemetery or crematory to use any items, we will explain the reasons in writing below."

(B) A funeral provider shall not violate this section by failing to comply with a request for a combination of goods or services which would be impossible, impractical, or excessively burdensome to provide.

<*> 203.50 - Embalming Provided Without Prior Approval

(a) In selling or offering to sell funeral goods or funeral services to the public, it is an unfair or deceptive act or practice for any provider to embalm a deceased human body for a fee unless:

(1) state or local law or regulation requires embalming in the particular circumstances regardless of any funeral choice which the family might make;

(2) prior approval for embalming (expressly so described) has been obtained from a family member or other authorized person; or

(3) the funeral provider is unable to contact a family member or other authorized person after exercising due diligence, has no reason to believe the family does not want embalming performed, and obtains subsequent approval for embalming already performed (expressly so described). In seeking approval, the funeral provider must disclose that a fee will be charged if the family selects a funeral which requires embalming, such as a funeral with viewing, and that no fee will be charged if the family selects a service which does not require embalming, such as direct cremation or immediate burial.

(b) To prevent these unfair or deceptive acts or practices, funeral providers must include on the itemized Purchase Agreement, required by §203.47 of this title, the statement: "If you selected a funeral that may require embalming, such as a funeral with viewing, you may have to pay for embalming. You do not have to pay for embalming you did not approve if you selected arrangements such as a direct cremation or immediate burial. If we charged for embalming, we will explain why below."

<*> 203.51 - Comprehensive of Disclosures

To prevent the unfair or deceptive acts or practices specified in §§203.46-203.50 of this title, funeral providers must make all disclosures required by those sections in a clear and conspicuous manner. Providers shall not include in the casket, outer burial container, urn, and general price lists, required by §203.46(b)(2)-(5) of this title, any statement or information that alters or contradicts the information required to be included in those lists.

<*> 203.52 - Violation to Engage in Unfair or Deceptive Acts or Practices

Except as otherwise provided in §203.46(a) of this title, it is a violation to engage in any unfair or deceptive acts or practices specified in Occupations Code, Chapter 651, or in the Rules of the Commission, or to fail to comply with any of the preventive requirements specified in Occupations Code, Chapter 651, or in the Rules of the Commission.

The agency certifies that legal counsel has reviewed the proposal and found it to be within the state agency's legal authority to adopt.

TFSC Administrative Penalties and Sanctions Schedule Attachment to Rule 203.43

Class A:

1st Violation: \$250

2nd Violation: \$750

3rd Violation: \$1,000 and/or sanction

4+ Violation: Up to \$5,000 and/or sanction

1. 651.157 - Failure to have premises open at all times to inspection
2. 651.261 - Failure to conspicuously display holder's license in each location
3. 651.304(a) Failure by Provisional Licensee to timely notify Commission of employment
4. 651.304(d) - Failure by FD/Embalmer to prepare affidavit of completed cases if provisional leaves employment
5. 651.351(d)(1) - Funeral Establishment must meet building, health & safety codes
6. 651.351(d)(3) - Failure by Funeral Establishment to include facilities in which funeral services may be conducted
7. 651.351(d)(4) - Failure by Funeral Establishment to have access to rolling stock
8. 651.351(d)(5) - Failure to maintain preparation room (i.e. have necessary equipment/supplies)
9. 651.351(d)(6) - Failure by Funeral Establishment to include facilities to comply with sanitary codes
10. 651.351(d)(7) / 651.351(f) - Failure by Funeral Establishment to include required casket display
11. 651.403 - Failure to promptly notify Commission of FDIC change
12. 651.404 / 651.454(a)(1) - Failure to provide Consumer brochure to customer
13. 651.407 - Failure to retain written consent for 2 years
14. 651.454(a)(4) - Failure to provide general price information by telephone within reasonable time
15. 651.454(b)(1) - Restricted, hindered, or attempted to restrict or hinder 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
16. 651.457(a)(3) - Allowed the presence/ participation of a student for credit or satisfaction of academic requirements during the embalming of a dead human body without complying with 651.407

Class B Offenses

1st Violation: \$500

2nd Violation: \$1,000

3rd Violation: Up to \$3,500 and/or sanction

4+ Violation: Up to \$5,000 and/or sanction

1. 651.405 - Failure of Funeral Establishment to include all provisions/notifications on GPL
2. 651.4055 - Failure of Cemetery/Crematory to include all provisions/notifications on GPL
3. 651.406 - Failure of Funeral Establishment to include all provisions/notifications on Purchase Agreement
4. 651.4065 - Failure of Cemetery/Crematory to include all provisions/notifications on Purchase Agreement
5. 651.4085 - Failure of FD or agent to be present when casket is interred or entombed unless out of state
6. 651.454(a)(3) - Failure to explain to a prospective customer that a contractual agreement for funeral services or merchandise may not be entered into before a retail price list is provided to the prospective customer
7. 651.454(c) - Solicited business or offered an inducement to secure or attempt to secure business for the funeral establishment unless the solicitation was made under a permit issued under Chapter 154, Finance Code
8. 651.454(a)(2) - Failure to provide to a prospective customer inquiring in person about any funeral service or merchandise a retail price list for the prospective customer to keep
9. 651.454(b)(2) - Restricted, hindered, or attempted to restrict or hinder: an agreement for funeral services between a consumer and a funeral director or embalmer
10. 651.455(a)(1) - Used false statement to mislead or deceive the public regarding a legal, religious, or cemetery requirement for funeral merchandise or funeral, cemetery, or crematory services
11. 651.455(a)(2) - Used false statement to mislead or deceive the public regarding the preservative qualities of funeral merchandise or funeral, cemetery, or crematory services in preventing or substantially delaying natural decomposition of human remains --
12. 651.455(a)(3) - Used false statement to mislead or deceive the public regarding the airtight or watertight properties of a casket or outer enclosure
13. 651.455(a)(4) - Used false statement to mislead or deceive the public regarding the licenses held by the personnel in the operation of the cemetery, crematory, or funeral establishment
14. 651.455(a)(5) - Used false statement to mislead or deceive the public regarding an activity regulated under this chapter, including the sale of funeral-related goods or services
15. 651.456(3) - Violated state law regarding transportation, storage, refrigeration, inurnment, interment, or disinterment of dead human body
16. 651.459(a)(3) - Engaged in negligence in the practice of embalming or funeral directing that is likely to or does deceive, defraud, or otherwise injure the public
17. 651.459(a)(5) - Directly or indirectly employed a person to solicit individuals or institutions by whose influence dead human bodies are turned over to a particular funeral director, embalmer, or funeral establishment
18. 651.459(b) - Stated or implied that a customer's concern with the cost of any funeral service or funeral merchandise was improper or indicated a lack of respect for the deceased
19. 651.460(a)(1) - Failed to provide a customer with a purchase agreement as required by Section 651.406

20. 651.460(a)(2) - Failed to retain and make available to the Commission copies of all price lists, written notices, embalming documents, and memoranda of agreement required for two years after the date of distribution or signing
21. 651.460(a)(5) - Associated with a funeral establishment, whether licensed or not, and failed to comply with Chapter 651 or Commission rule
22. 651.460(a)(6) – Knowingly violates Section 711.002(1), Health and Safety Code
23. 651.460(b)(1) - Failure by a funeral establishment to substantially comply with requirements of Section 651.351 (i.e., have a preparation room at all)

Class C Offenses:

1st Violation: \$1,000

2nd Violation: \$1,500

3rd Violation: Up to \$4,000 and/or sanction

4+ Violation: Up to \$5,000 and/or sanction

1. 651.306 - FD/Embalmer is not physically present when supervising provisional licensee
2. 651.401(c) - Unlicensed person commits first call violations
3. 651.407 - Use of dead human body by mortuary school without written consent
4. 651.451(7) - Permitted another to use the person's license or registration to perform an activity regulated under 651
5. 651.453 - Advertised in misleading or deceptive way or used the name of person who is falsely represented to be the license holder
6. 651.456(1) - Took custody of body without permission
7. 651.456(2) - Refused to promptly surrender a body to authorized agent (or representative)
8. 651.457(a)(1) - Embalmed a body without receiving the express written or oral permission of a person authorized to make funeral arrangements for the deceased; or making a documented reasonable effort over a period of at least three hours to obtain the permission
9. 651.457(a)(4) - Placed a chemical or substance on or in a dead human body to disinfect or preserve the body or to restore body tissues and structures without holding an embalmer's license or provisional embalmer's license
10. 651.458 - Made a distinction in providing funeral information to a customer
11. 651.459(a)(1) - Wilfully made a false statement on a death certificate, including forgery of a physician's signature; or a document required by this law/rule
12. 651.459(a)(2) - Engaged in fraudulent, unprofessional, or deceptive conduct in providing funeral services or merchandise to a customer
13. 651.459(a)(3) - Engaged in dishonest conduct, wilful conduct, in the practice of embalming or funeral directing that is likely to or does deceive, defraud, or otherwise injure the public
14. 651.459(a)(4) - Caused the execution of a document by the use of fraud, deceit, or misrepresentation
15. 651.459 (a)(6) - Misappropriated funds held by a license holder, a funeral establishment, an employee or agent of the funeral establishment, or another depository, that created an obligation to provide a funeral service or merchandise, including retaining for an unreasonable time excess funds paid by or on behalf of the customer for which the customer is entitled to a refund
16. 651.459(c) - FDIC fails to provide a funeral director or an embalmer for direction or personal supervision for a first call
17. 651.460(a)(4) - Allowed the use of a dead human body by an embalming establishment for research or educational purposes without complying with Section 651.407
18. 651.460(b)(3) - A funeral establishment, a person acting on behalf of the funeral establishment, or a person directly or indirectly connected with the funeral establishment violated Chapter 154, Finance Code, or a rule adopted under that chapter

Class D:

1st Violation: Up to \$5,000 and/or sanction

2nd Violation: Up to \$5,000 and sanction

3rd Violation: Up to \$5,000 and sanction

4+ Violation: \$5,000 and Revocation

1. 651.452(1) - Conviction of misdemeanor related to the practice of funeral directing or embalming or of a felony
2. 651.452(2-3) – Ongoing/current substance abuse or determined by court to be of unsound mind
3. 651.460 (a)(3) - Fails to comply with Order of Commission or pay administrative penalty
4. 651.251 - Engaged or professed to be engaged in business of funeral directing/embalming unless licensed by Commission
5. 651.351(a) - Funeral Establishment may not conduct business unless licensed
6. 651.352 - Commercial embalming facility may not conduct business unless licensed
7. 651.353 - Cemetery may not conduct business unless licensed and not exempt under (d)
8. 651.656 - Crematory may not conduct business unless licensed
9. 651.451(1) - Presented to Commission license, certificate, registration, or diploma that was illegally or fraudulently obtained
10. 651.451(2) - Used fraud or deception in passing the examination, including impersonating or acting as a proxy for another person in the examination
11. 651.451(3) - Purchased, sold, bartered, or used, or offered to purchase, sell, barter, or use, a license, registration, certificate, or transcript of a license, registration, or certificate in or incident to an application to the Commission for a license or registration issued under this chapter
12. 651.451(4) - Altered, with fraudulent intent, a license, registration, or certificate issued under Chapter 651 or a transcript of a license, registration, or certificate --
13. 651.451(5) - Used a license, registration, certificate, or diploma issued or a transcript of a license, registration, certificate, or diploma that was fraudulently purchased, issued, counterfeited, or materially altered
14. 651.451(6) - Impersonated a funeral director, embalmer, or other person regulated under 651
15. 651.451(8) - Presented false certification of work done as a provisional license holder
16. 651.459 (a)(7) - Performed acts of funeral directing or embalming that are outside the licensed scope and authority of the license holder, or performed 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
17. 651.460(b)(2) - A funeral establishment or a person acting on behalf of the funeral establishment violated Chapter 193 or 361, Health and Safety Code