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CHAPTER 191. ADMINISTRATION OF VITAL STATISTICS RECORDS

Subchapter A. General Provisions

Sec. 191.001. Definitions

In this title:

(1) "Board" means the Texas Board of Health.
(2) "Department" means the Texas Department of Health.

Sec. 191.002. Powers And Duties Of Department

(a) The department shall administer the registration of vital statistics.
(b) The department shall:
  (1) Establish a bureau of vital statistics with suitable offices that are properly equipped for the preservation of its official records;
  (2) Establish a statewide system of vital statistics;
  (3) Provide instructions and prescribe forms for collecting, recording, transcribing, compiling, and preserving vital statistics;
  (4) Require the enforcement of this title and rules adopted under this title;
  (5) Prepare, print, and supply to local registrars forms for registering, recording, and preserving returns or otherwise carrying out the purposes of this title; and
  (6) Propose legislation necessary for the purposes of this title.
(c) The department may use birth records and provide those records on request to other state agencies for programs notifying mothers of young children about children's health needs.

Sec. 191.003. Powers And Duties Of Board

(a) The board shall:
  (1) Adopt necessary rules for collecting, recording, transcribing, compiling, and preserving vital statistics;
  (2) Supervise the bureau of vital statistics; and
  (3) Appoint the director of the bureau of vital statistics.
(b) In an emergency, the board may suspend any part of this title that hinders the uniform and efficient registration of vital events and may substitute emergency rules designed to expedite that registration under disaster conditions.

Sec. 191.004. State Registrar

(a) The director of the bureau of vital statistics is the state registrar of vital statistics. The director must be a competent vital statistician.
(b) The state registrar shall prepare and issue detailed instructions necessary for the uniform observance of this title and the maintenance of a perfect system of registration.

Sec. 191.0045. Fees

(a) The bureau of vital statistics may charge fees for providing services to the public and performing other activities in connection with maintenance of the vital statistics system, including:
  (1) Performing searches of birth, death, fetal death, marriage, divorce, annulment, and other records;
  (2) Preparing and issuing copies and certified copies of birth, death, fetal death, marriage, divorce, annulment, and other records; and
  (3) Filing a record, amendment, or affidavit under this title.

(b) The board by rule may prescribe a schedule of fees for vital statistics services. The aggregate of the amounts of the fees may not exceed the cost of administering the vital statistics system.

(c) The bureau of vital statistics shall refund to an applicant any fee received for services that the bureau cannot perform. If the money has been deposited to the credit of the vital statistics fund, the comptroller shall issue a warrant against the fund for refund of the payment on presentation of a claim signed by the state registrar.

(d) A local registrar or county clerk who issues a certified copy of a birth or death certificate shall charge the same fees as charged by the bureau of vital statistics, including the additional fee required under subsection (e), except as provided by subsections (g) and (h).

(e) In addition to fees collected by the bureau of vital statistics under subsection (b), the bureau shall collect an additional $2 fee for each of the following:
  (1) Issuing a certified copy of a certificate of birth;
  (2) Issuing a wallet-sized certification of birth; and
  (3) Conducting a search for a certificate of birth.

(f) Repealed by acts 2005, 79th leg., ch. 263, sec. 5(1), eff. May 30, 2005.

(g) A local registrar or county clerk that on march 31, 1995, was charging a fee for the issuance of a certified copy of a birth certificate that exceeded the fee charged by the bureau of vital statistics for the same type of certificate may continue to do so but shall not raise this fee until the fee charged by the bureau exceeds the fee charged by the local registrar or county clerk. A local registrar or county clerk to which this subsection applies shall charge the additional fee as required under subsection (e).

(h) In addition to other fees collected under this section, a local registrar or county clerk may collect a fee not to exceed $1 for:
  (1) Preserving vital statistics records maintained by the registrar or county clerk, including birth, death, fetal death, marriage, divorce, and annulment records;
  (2) Training registrar or county clerk employees regarding vital statistics records; and
  (3) Ensuring the safety and security of vital statistics records.

(i) A fee under this section shall be collected by the registrar or county clerk on the issuance of a vital statistics record, including a record issued through a Remote Birth Access site.

Sec. 191.0046. Fee Exemptions

(a) On the request of a child's parent or guardian, the state registrar shall issue without fee a certificate necessary for admission to school or to secure employment. The certificate shall be limited to a statement of the child's date of birth.

(b) The state registrar shall issue without fee a certified copy of a record not otherwise prohibited by law to a veteran or to the veteran's widow, orphan, or other dependent if the copy is for use in settling a claim against the government.

(c) On court order, the state registrar may issue without fee a certified copy of a birth record in cases related to child labor or the public schools.

(d) The state registrar on request shall issue without a fee a copy of a birth or death record that is not certified to a child fatality review team or the child fatality review team committee established under subchapter f, chapter 264, family code.

Sec. 191.0047. Birth Information for Department of Family And Protective Services

(a) The Department of State Health Services shall implement an efficient and effective method to verify birth information or provide a certified copy of a birth record necessary to provide services for the benefit of a minor being served by the Department of Family and Protective Services.

(b) The Department of State Health Services shall enter into a memorandum of understanding with the Department of Family and Protective Services to implement this section. Subject to Subsection (c), the terms of the memorandum of understanding must include methods for reimbursing the Department of State Health Services in an amount that is not more than the actual costs the department incurs in verifying the birth information or providing the birth record to the Department of Family and Protective Services.

(c) The Department of State Health Services may not collect a fee or other amount for verification of birth information or provision of a certified copy of the birth record under Subsection (a) for a child in the managing conservatorship of the Department of Family and Protective Services if parental rights to the child have been terminated and the child is eligible for adoption.

Sec. 191.0048. Voluntary Contribution To Texas Home Visiting Program

(a) A person requesting a copy or certified copy of a birth, marriage, or divorce record may make a voluntary contribution of $5 to promote healthy early childhood by supporting the Texas Home Visiting Program administered by the Office of Early Childhood Coordination of the Health and Human Services Commission.

(b) On each paper or electronic application form for a copy or certified copy of a birth, marriage, or divorce record, the bureau of vital statistics shall include a printed box for the applicant to check indicating that the applicant wishes to make a voluntary contribution of $5 to promote healthy early childhood by supporting the Texas Home Visiting Program administered by the Office of Early Childhood Coordination of the Health and Human Services Commission.

(c) Notwithstanding Section 191.0045, a local registrar or county clerk may collect the additional voluntary contribution under this section.

(d) Notwithstanding Section 191.005, the local registrar or county clerk who collects the voluntary contribution under this section shall send the voluntary contribution to the comptroller, who shall deposit the voluntary contribution in the Texas Home Visiting Program trust fund under Section 531.287, Government Code.

Sec. 191.005. Vital Statistics Fund

(a) The vital statistics fund is in the state treasury.

(b) The legislature shall make appropriations to the department from the fund to be used to defray expenses incurred in the administration and enforcement of the system of vital statistics.

(c) All fees collected by the bureau of vital statistics shall be deposited to the credit of the vital statistics fund.

Sec. 191.006. Records Of Persons In Hospitals And Institutions

(a) This section applies to each public or private hospital, almshouse, or other institution to which persons are committed by process of law or voluntarily enter for treatment of disease or for confinement.

(b) When a person is admitted to the institution, the superintendent, manager, or other person in charge of the institution shall record, in the manner directed by the state registrar, the admitted person's personal and statistical data required by certificate forms under this title. If the person is admitted for the treatment of disease, the physician in charge shall specify for the record the nature of the disease and where, in the physician's opinion, the disease was contracted.

(c) The personal information required under subsection (b) shall be obtained:

(1) From the person admitted to the institution, if practicable; or

(2) From the person's relatives or friends or from other persons acquainted with the facts, in as complete a manner as possible, if the information cannot be obtained from the person admitted to the institution.

Sec. 191.007. Regulation By Certain Municipalities

The governing body of a Type A general-law municipality may:

(1) Regulate the registration of marriages; and

(2) Direct the return and maintenance of bills of mortality.

Sec. 191.008. Sorting Collected Data

(a) The department shall compile the information relating to births, deaths, and fetal deaths collected under this chapter and organize the results, to the extent possible, according to the following geographic areas:

(1) The Texas-Mexico border region;

(2) Each public health region;

(3) Rural areas;

(4) urban areas;

(5) Each county; and

(6) The state.

(b) The department may release the information relating to births, deaths, and fetal deaths in accordance with the way it is compiled under this section.

Subchapter B. Records Of Births, Deaths, And Fetal Deaths

Sec. 191.021. Registration Districts

(a) The state is divided into registration districts for the purposes of registering births, deaths, and fetal deaths. The registration districts are:

(1) Each justice of the peace precinct; and

(2) Each municipality with a population of 2,500 or more.

(b) To facilitate registration, the board may combine or divide registration districts.

Sec. 191.022. Local Registrars

(a) The justice of the peace is the 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) Each local registrar shall appoint a deputy registrar so that a registrar will be available at all times for the registration of births and deaths.

(d) The local registrar shall sign each report made to the bureau of vital statistics.

(e) If a local registrar fails or refuses to register each birth and death in the district or neglects duties under this title, 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.

(f) A local registrar who collects a fee for a certified copy of a birth certificate shall deduct 20 cents of that fee to apply to the registrar's administrative costs and remit $1.80 of that fee to the comptroller.

Sec. 191.023. Consolidation Of County And Municipal Maintenance Of Birth And Death Records

(a) The duties imposed by law relating to the maintenance of birth and death records of a municipality with a population of 2,500 or more may be transferred to the county in which the municipality is located, as provided by this section.

(b) If the commissioners court adopts a resolution to transfer the duties and the governing body of the municipality subsequently adopts a concurring resolution, the county and municipality shall agree on a timetable for the transfer and shall execute the transfer in an orderly fashion.

(c) Before a commissioners court may adopt a resolution under subsection (b), the official to whom the duties would be transferred must attest in writing that the official has sufficient resources and finances to assume those duties.

(d) If the governing body of a municipality does not adopt a concurring resolution before the 91st day after the date on which a county adopts a resolution under subsection (b), a petition by the qualified voters of the municipality may serve as the equivalent of a concurring resolution under subsection (b). The petition must succinctly describe the intention to consolidate county and municipal maintenance of birth and death records and must be signed by a number of qualified voters equal to at least 20 percent of the number of qualified voters voting in the most recent mayoral election.

(e) A consolidation under this section affects only the county and the municipality to which the resolutions apply. This section does not affect the apportionment of registration districts under section 191.021.

Sec. 191.024. Reports of Information

(a) On the state registrar's demand, a person, including a local registrar, physician, midwife, or funeral director, who has information relating to a birth, death, or fetal death shall supply the information to the state registrar in person, by mail, or through the local registrar. The person shall supply the information on a form provided by the department or on the original certificate.

(b) An organization or individual who has a record of births or deaths that may be useful to establish the genealogy of a resident of this state may file the record or a duly authenticated transcript of the record with the state registrar.

Sec. 191.025. Record Books And Certificates

(a) Forms for the registration of births, deaths, and fetal deaths must be approved by the department.

(b) A municipality shall supply its local registrar, and each county shall supply the county clerk, with permanent record books for recording the births, deaths, and fetal deaths occurring in their respective jurisdictions. The record books must be in forms approved by the state registrar.

(c) A local registrar shall supply forms of certificates to persons who need them. The board shall establish and promulgate rules for strict accountability of birth certificates to prevent birth certificate fraud.

(d) Information required on a certificate must be written legibly in durable blue or black ink or may be filed and registered by photographic, electronic, or other means as prescribed by the state registrar.

(e) A certificate must contain each item of information required on the certificate or a satisfactory reason for omitting the item.

(f) The department shall require that the form for the registration of deaths must include the question, "Was the decedent a peace officer or an honorably retired peace officer in this state?".

Sec. 191.026. Local Records

(a) The local registrar shall secure a complete record of each birth, death, and fetal death that occurs in the local registrar's jurisdiction.

(b) The local registrar shall consecutively number birth and death certificates in separate series, beginning with the number "1" for the first birth and the first death in each calendar year. The local registrar shall sign each certificate to attest to the date the certificate is filed in the local registrar's office.

(c) The local registrar shall copy in the record book required under Section 191.025 each certificate that the local registrar registers, unless the local registrar keeps duplicates under Subsection (d) or makes photographic duplications as authorized by Chapter 181 or 201, Local Government Code. Except as provided by Subsection (e), the copies shall be permanently preserved in the local registrar's office as the local record, in the manner directed by the state registrar.

(d) The local registrar may permanently bind duplicate reports of births and deaths, if the duplicates are required by local ordinance, and index them in the manner that the state registrar indexes records under Section 191.032.

(e) The local registrar may, after the first anniversary of the date of registration of a birth, death, or fetal death, destroy the permanent record of the birth, death, or fetal death maintained by the local registrar if:

  (1) The local registrar has access to electronic records of births, deaths, and fetal deaths maintained by the bureau of vital statistics; and

  (2) Before destroying the records, the local registrar certifies to the state registrar that each record maintained by the local office that is to be destroyed has been verified against the records contained in the bureau's database and that each record is included in the database or otherwise accounted for.

Sec. 191.027. Review Of Certificate By Local Registrar

(a) The local registrar shall carefully examine each birth or death certificate when presented for registration to determine if it is completed as required by this title and by the state registrar's instructions.

(b) If a death certificate is incomplete or unsatisfactory, the local registrar shall call attention to the defects in the return.

(c) If a birth certificate is incomplete, the local registrar shall immediately notify the informant and require the informant to supply the missing information if it can be obtained.

Sec. 191.028. Amendment Of Certificate

(a) A record of a birth, death, or fetal death accepted by a local registrar for registration may not be changed except as provided by Subsection (b).

(b) An amending certificate may be filed to complete or correct a record that is incomplete or proved by satisfactory evidence to be inaccurate. The amendment must be in a form prescribed by the department. The amendment shall be attached to and become a part of the legal record of the birth, death, or fetal death if the amendment is accepted for filing, except as provided by Section 192.011(b).

(c) Not later than the 30th business day after the date the department receives an amending certificate, the department shall notify the individual of whether the amendment has been accepted for filing.

Sec. 191.029. Certificates or Report Sent to State Registrar

On the 10th day of each month, the local registrar shall send to the state registrar:

(1) The original certificates that the local registrar registered during the preceding month; or

(2) A report of no births or deaths on a card provided for that purpose if no births or deaths occurred during the preceding month.

Sec. 191.031. Review Of Certificates By State Registrar

(a) The state registrar shall carefully examine the certificates received monthly from the local registrars.

(b) The state registrar shall require additional information to make the record complete and satisfactory if necessary.

Sec. 191.032. State Records

(a) The state registrar shall arrange, bind, and permanently preserve birth, death, and fetal death certificates in a systematic manner.

(b) The board shall adopt rules necessary to implement this section.

Sec. 191.033. Addenda

(a) The state registrar may attach to the original record an addendum that sets out any information received by the state registrar that may contradict the information in a birth, death, or fetal death record required to be maintained in the bureau of vital statistics.

(b) If the state registrar attaches an addendum to an original record, the state registrar shall instruct the local registration official in whose jurisdiction the birth, death, or fetal death occurred to attach an identical addendum to any duplicate of the record in the official's custody.

(c) In this section, "local registration official" means a county clerk or a person authorized by this title to maintain a duplicate system of records for each birth, death, or fetal death that occurs in the person's jurisdiction.

Sec. 191.034. Notation Of Death On Birth Certificate

(a) On receipt of the death certificate of a person whose birth is registered in this state, the state registrar shall conspicuously note the person's date of death on the person's birth certificate.

(b) The state registrar shall notify the county clerk of the county in which the decedent was born and to the local registrar of the registration district in which the person was born of the person's death. On receipt of the notification of death, the county clerk or local registrar shall conspicuously note the person's date of death on the person's birth certificate.

Sec. 191.036. Spanish Surname Information

(a) The purpose of this section is to:
  (1) Enable this state to participate in a study being conducted by a group of southwestern states to obtain information about the birth rates and mortality patterns of persons with spanish surnames; and
  (2) Implement recommendations made by the national center for health statistics for improved methods of maintaining vital statistics.

(b) In the next official revision of the prescribed forms for birth and fetal death certificates, the department shall include the following questions and instructions:
  (1) Is the father of Spanish origin?
  (2) If yes, specify Mexican, Cuban, Puerto Rican, etc.
  (3) Is the mother of Spanish origin?
  (4) If yes, specify Mexican, Cuban, Puerto Rican, etc.

(c) In the next official revision of the prescribed forms for death certificates, the department shall include the following questions and instructions:
  (1) Was the decedent of Spanish origin?
  (2) If yes, specify Mexican, Cuban, Puerto Rican, etc.

Subchapter C. Copies Of Records

Sec. 191.051. Certified Copies

(a) Subject to board rules controlling the accessibility of vital records, the state registrar shall supply to a properly qualified applicant, on request, a certified copy of a record, or part of a record, of a birth, death, or fetal death registered under this title.

(b) A certified copy issued under this subsection may be issued only in the form approved by the department.

Sec. 191.052. Certified Copy As Evidence

A copy of a birth, death, or fetal death record registered under this title that is certified by the state registrar is prima facie evidence of the facts stated in the record.

Sec. 191.056. Copies Collected By National Agency

(a) The national agency in charge of the collection of vital statistics may obtain, without expense to the state, transcripts of vital records without payment of the fees prescribed by this chapter.

(b) The bureau of vital statistics may contract with the national agency to have copies of vital records that are filed with the bureau transcribed for that agency.

(c) The state registrar may act as special agent for the national agency to accept the use of the franking privilege and forms furnished by the national agency.

Sec. 191.057. Records With Addenda

(a) In this section:
  (1) "copy" means a reproduction of a record made by any means.
  (2) "local registration official" means a county clerk or a person authorized by this title to maintain a duplicate system of records for each birth, death, or fetal death that occurs in the person's jurisdiction.

(b) If the bureau of vital statistics or any local registration official receives an application for a certified copy of a birth, death, or fetal death record to which an addendum has been attached under section 191.033, the application shall be sent immediately to the state registrar. After examining the application, the original record, and the addendum, the state registrar may refuse to issue a certified copy of the record or part of the record to the applicant.

(c) If the state registrar refuses to issue the certified copy:

  (1) The state registrar shall notify the applicant of the refusal and the reason for the refusal not later than the 10th day after the date on which the state registrar receives the application; and

  (2) The department shall give the applicant an opportunity for a hearing.

(d) After the hearing, the state registrar shall notify the local officials who have duplicates of the questioned record of the department's final decision. The department may order the officials to issue or refuse to issue certified copies of the record.

(e) A duty imposed on or a power granted to the state registrar under this section may be performed or exercised by a designee of the state registrar.

CHAPTER 192. BIRTH RECORDS

Subchapter A. General Registration Provisions

Sec. 192.001. Registration Required

The Birth Of Each Child Born In This State Shall Be Registered.

Sec. 192.002. Form Of Birth Certificate

(a) The department shall prescribe the form and contents of the birth certificate.

(b) The section of the birth certificate entitled "for medical and health use only" is not part of the legal birth certificate. Information held by the department under that section of the certificate is confidential. That information may not be released or made public on subpoena or otherwise, except that release may be made for statistical purposes only so that no person, patient, or facility is identified, or to medical personnel of a health care entity, as that term is defined in subtitle b, title 3, occupations code, or to a faculty member at a medical school, as that term is defined in Section 61.501, Education Code, for statistical or medical research, or to appropriate state or federal agencies for statistical research. The board may adopt rules to implement this subsection.

(c) The form must include a space for recording the social security numbers of the mother and father and the signatures of the biological mother and biological father. These social security numbers and signatures are not a part of the legal birth certificate, shall be made available to the agency administering the state's plan under part d of title iv of the federal social security act (42 u.s.c. section 651 et seq.), and may not be used or disseminated for any purpose other than the establishment and the enforcement of child support orders.

(d) The social security numbers of the mother and father recorded on the form shall be made available to the federal social security administration.

Sec. 192.0021. Heirloom Birth Certificate

(a) The department shall promote and sell copies of an heirloom birth certificate. The department shall solicit donated designs for the certificate from Texas artists and select the best donated designs for the form of the certificate. An heirloom birth certificate must contain the same information as, and have the same effect of, a certified copy of another birth record. The department shall prescribe a fee for the issuance of an heirloom birth certificate in an amount that does not exceed $50. The heirloom birth certificate must be printed on high-quality paper with the appearance of parchment not smaller than 11 inches by 14 inches.

(b) The department shall deposit 50 percent of the proceeds from the sale of heirloom birth certificates to the credit of the childhood immunization account and the other 50 percent to the credit of the undedicated portion of the general revenue fund. The childhood immunization account is an account in the general revenue fund. Money in the account may be used only by the Department of State Health Services for:

(1) Making grants to fund childhood immunizations and related education programs; and

(2) Administering this section.

(c) The department may sell an heirloom birth certificate only for an individual born in this state.

Sec. 192.0022. Certificate of Birth Resulting in Stillbirth

(a) In this section:

(1) "Stillbirth" means an unintended, intrauterine fetal death occurring in this state after a gestational age of not less than 20 completed weeks.

(2) "Certificate of birth resulting in stillbirth" means a birth certificate issued to record the birth of a stillborn child.

(b) The person who is required to file a fetal death certificate under Section 193.002 shall advise the parent or parents of a stillborn child:

(c) that a parent may, but is not required to, request the preparation of a certificate of birth resulting in stillbirth;

(d) that a parent may obtain a certificate of birth resulting in stillbirth by contacting the bureau of vital statistics to request the certificate and paying the required fee; and

(e) regarding the way or ways in which a parent may contact the bureau of vital statistics to request the certificate.

(f) A parent may provide a name for a stillborn child on the request for a certificate of birth resulting in stillbirth. If the requesting parent does not wish to provide a name, the bureau of vital statistics shall fill in the certificate with the name "baby boy" or "baby girl" and the last name of the parent. The name of the stillborn child provided on or later added by amendment to the certificate of birth resulting in stillbirth shall be the same name as placed on the original or amended fetal death certificate.

(g) A certificate of birth resulting in stillbirth must include the state file number of the corresponding fetal death certificate.

(h) The department shall prescribe the form and content of a certificate of birth resulting in stillbirth and shall specify the information necessary to prepare the certificate.

(i) The bureau of vital statistics may not use a certificate of birth resulting in stillbirth to calculate live birth statistics.

(j) On issuance of a certificate of birth resulting in stillbirth to a parent who has requested the certificate as provided by this section, the bureau of vital statistics shall file an exact copy of the certificate with the local registrar of the registration district in which the stillbirth occurred. The local registrar shall file the certificate of birth resulting in stillbirth with the fetal death certificate.

(k) A parent may request the bureau of vital statistics to issue a certificate of birth resulting in stillbirth without regard to the date on which the fetal death certificate was issued.

(l) The executive commissioner of the Health and Human Services Commission may adopt rules necessary to administer this section.

Sec. 192.003. Birth Certificate Filed Or Birth Reported

(a) The physician, midwife, or person acting as a midwife in attendance at a birth shall file the birth certificate with the local registrar of the registration district in which the birth occurs.

(b) If a birth occurs in a hospital or birthing center, the hospital administrator, the birthing center administrator, or a designee of the appropriate administrator may file the birth certificate in lieu of a person listed by subsection (a).

(c) If there is no physician, midwife, or person acting as a midwife in attendance at a birth and if the birth does not occur in a hospital or birthing center, the following in the order listed shall report the birth to the local registrar:

  (1) The father or mother of the child; or

  (2) The owner or householder of the premises where the birth occurs.

(d) Except as [provided by subsection (e), a person required to file a birth certificate or report a birth shall file the certificate or make the report not later than the fifth day after the date of the birth.

(e) Based on a parent's religious beliefs, a parent may request that a person required to file a birth certificate or report a birth delay filing the certificate or making the report until the parent contacts the person with the child's name. If a parent does not name the child before the fifth day after the date of the birth due to the parent's religious beliefs, the parent must contact the person required to file the birth certificate or report the birth with the name of the child as soon as the child is named. A person required to file the birth certificate or report the birth who delays filing the certificate or making the report in accordance with the parent's request shall file the certificate or make the report not later than the 15th day after the date of the child's birth.

Sec. 192.0031. Information Of Birth To School-Age Mother

(a) Notwithstanding subchapter c, chapter 552, government code, the department shall notify the commissioner of education of each birth to a school-age mother. The commissioner may notify the school district in which a school-age mother resides of each birth to a school-age mother.

(b) The department may not notify the commissioner of a birth to a school-age mother if:

  (1) The child died at birth; or

  (2) The child was placed for adoption.

(c) A notification under this section must include the name and address of the mother, the father, if the father is of school age and is named on the birth certificate, and the person born. Reports under this section shall be sent at least quarterly.

Sec. 192.004. Information Obtained By Local Registrar

(a) The local registrar shall obtain the information necessary to prepare the birth certificate from the person reporting a birth or from another person with the required knowledge if:

  (1) The birth is reported under section 192.003(c); or

  (2) A person who files a certificate under section 192.003(a) or 192.003(b) cannot by diligent inquiry obtain an item of information required for the certificate.

(b) A person from whom a local registrar requests necessary information shall answer correctly to the best of the person's knowledge. On request of the local registrar, a person who makes a statement under this section shall verify the statement by signing it.

Sec. 192.005. Record Of Paternity

(a) The items on a birth certificate relating to the child's father shall be completed only if:
  (1) The child's mother was married to the father:
    (A) At the time of the child's conception;
    (B) At the time of the child's birth; or
    (C) After the child's birth;
  (2) Paternity is established by order of a court of competent jurisdiction; or
  (3) A valid acknowledgment of paternity executed by the father has been filed with the bureau of vital statistics as provided by subchapter d, chapter 160, family code.

(b) Repealed by acts 2003, 78th leg., ch. 610, sec. 23, eff. Sept. 1, 2003.

(c) A person may apply to the state registrar for the removal of any indication of the absence of paternity of a child who has no presumed father from the person's birth record.

(d) If the items relating to the child's father are not completed on a birth certificate filed with the state registrar, the state registrar shall notify the attorney general.

Sec. 192.0051. Report Of Determination Of Paternity

(a) A report of each determination of paternity in this state shall be filed with the state registrar.

(b) On a determination of paternity, the petitioner shall provide the clerk of the court in which the decree was granted with the information necessary to prepare the report. The clerk shall:
  (1) Report the determination on a form or in a manner provided by the department; and
  (2) Complete the report immediately after the decree becomes final.

(c) On completion of the report, the clerk of the court shall forward to the state registrar the report for each decree that became final in that court.

Sec. 192.006. Supplementary Birth Certificates

(a) A supplementary birth certificate may be filed if the person who is the subject of the certificate:
  (1) Becomes the child of the person's father by the subsequent marriage of the person's parents;
  (2) Has the person's parentage determined by a court of competent jurisdiction; or
  (3) Is adopted under the laws of any state.

(b) An application for a supplementary birth certificate may be filed by:
  (1) An adult whose status is changed; or
  (2) A legal representative of the person whose status is changed.

(c) The state registrar shall require proof of the change in status that the board by rule may prescribe.

(d) Supplementary birth certificates and applications for supplementary birth certificates shall be prepared and filed in accordance with board rules.

(e) In accordance with board rules, a supplementary birth certificate may be filed for a person whose parentage has been determined by an acknowledgment of paternity.

Sec. 192.007. Supplementary Certificates For Child Who Dies Before Adoption

(a) If a child in the process of being adopted in this state dies before the adoption is completed, the persons who attempted to adopt the child may request the state registrar to file supplementary birth and death certificates for the child.

(b) Persons making a request under this section must include with the request:

  (1) Sufficient information to prove that they attempted to adopt the child and that the child died before the adoption was completed;

  (2) A copy of an irrevocable affidavit of relinquishment of parental rights relating to the child;

  (3) A copy of the affidavit of the status of the child, if applicable; and

  (4) Any other information required by the department.

(c) On receipt of the information required by subsection (b), the state registrar shall complete birth and death certificates as if the child had been adopted by court decree and then died.

(d) In the absence of evidence to the contrary, compliance with this section and the completion of the birth certificate constitute adoption by estoppel.

Sec. 192.008. Birth Records Of Adopted Person

(a) The supplementary birth certificate of an adopted child must be in the names of the adoptive parents, one of whom must be a female, named as the mother, and the other of whom must be a male, named as the father. This subsection does not prohibit a single individual, male or female, from adopting a child. Copies of the child's birth certificates or birth records may not disclose that the child is adopted.

(b) After a supplementary birth certificate of an adopted child is filed, information disclosed from the record must be from the supplementary certificate.

(c) The board shall adopt rules and procedures to ensure that birth records and indexes under the control of the department or local registrars and accessible to the public do not contain information or cross-references through which the confidentiality of adoption placements may be directly or indirectly violated. The rules and procedures may not interfere with the registries established under Subchapter E, Chapter 162, Family Code, or with a court order under this section.

(d) Except as provided by Subsections (e) and (f), only the court that granted the adoption may order access to an original birth certificate and the filed documents on which a supplementary certificate is based.

(e) A person applying for access to an original birth certificate and the filed documents on which the supplementary certificate is based is entitled to know the identity and location of the court that granted the adoption. If that information is not on file, the state registrar shall give the person an affidavit stating that the information is not on file with the state registrar. Any court of competent jurisdiction to which the person presents the affidavit may order the access.

(f) An adult adoptee who is applying for access to the person's original birth certificate and who knows the identity of each parent named on the original birth certificate is entitled to a noncertified copy of the original birth certificate without obtaining a court order.

Sec. 192.009. Certificate Of Adoption, Annulment Of Adoption, Or Revocation Of Adoption

(a) A certificate of each adoption, annulment of adoption, and revocation of adoption decreed in this state shall be filed with the state registrar.

(b) When a petition for adoption, annulment of adoption, or revocation of adoption is granted, the petitioner shall supply the clerk of the court the information necessary to prepare the certificate. The clerk shall:

  (1) Prepare the certificate on a form furnished by the department that provides the information prescribed by the department; and

  (2) Complete the certificate immediately after the decree becomes final.

(c) Not later than the 10th day of each month, the clerk shall forward to the state registrar the certificates that the clerk completed for decrees that became final in the preceding calendar month.

(d) If the bureau of vital statistics determines that a certificate filed with the state registrar under this section requires correction, the bureau shall mail the certificate directly to an attorney of record with respect to the petition of adoption, annulment of adoption, or revocation of adoption. The attorney shall return the corrected certificate to the bureau. If there is no attorney of record, the bureau shall mail the certificate to the clerk of the court for correction.

Sec. 192.010. Change Of Name

(a) Subject to board rules, an adult whose name is changed by court order, or the legal representative of any person whose name is changed by court order, may request that the state registrar attach an amendment showing the change to the person's original birth record.

(b) The state registrar shall require proof of the change of name that the board by rule may prescribe.

(c) Repealed by acts 1991, 72nd leg., ch. 14, sec. 59, eff. Sept. 1, 1991.

Sec. 192.011. Amending Birth Certificate

(a) This section applies to an amending birth certificate that is filed under section 191.028 and that completes or corrects information relating to the person's sex, color, or race.

(b) On the request of the person or the person's legal representative, the state registrar, local registrar, or other person who issues birth certificates shall issue a birth certificate that incorporates the completed or corrected information instead of issuing a copy of the original or supplementary certificate with an amending certificate attached.

(c) The department shall prescribe the form for certificates issued under this section.

Sec. 192.012. Record Of Acknowledgment Of Paternity

(a) If the mother of a child is not married to the father of the child, a person listed in section 192.003 who is responsible for filing the birth certificate shall:

  (1) Provide an opportunity for the child's mother and putative father to sign an acknowledgment of paternity as provided by subchapter c, chapter 160, family code; and

  (2) Provide oral and written information to the child's mother and putative father about:

    (A) Establishing paternity, including an explanation of the rights and responsibilities that result from acknowledging paternity; and

    (B) The availability of child support services.

(b) The local registrar shall transmit the acknowledgment of paternity to the state registrar.

(c) The state registrar shall record the information contained in the acknowledgment of paternity and transmit the information to the title iv-d agency.

(d) The title iv-d agency may use the information contained in the acknowledgment of paternity for any purpose directly connected with providing child support services under chapter 231, family code.

Subchapter B. Delayed Registration

Sec. 192.021. Delay Less Than One Year

(a) A birth that occurred more than five days but less than one year before the date of an application for registration may be recorded on a birth certificate and submitted for filing to the local registrar of the registration district in which the birth occurred.

(b) The local registrar may require evidence to substantiate the facts of the birth and may require a statement explaining the delay in filing the birth certificate. The local registrar may accept the certificate for filing if the evidence required by the local registrar is submitted.

(c) Registration under this section is subject to board rules.

Sec. 192.022. Delay Of One Year Or More: Application Filed With State Registrar

Subject to board rules, an application to file a delayed birth certificate for a birth in this state not registered before the one-year anniversary of the date of birth shall be made to the state registrar.

Sec. 192.023. Delay Of More Than One But Less Than Four Years

(a) A birth that occurred at least one year but less than four years before the date of the application for registration shall be recorded on a birth certificate in the form prescribed by the state registrar and submitted to the state registrar for filing.

(b) The state registrar may require evidence to substantiate the facts of the birth and may require a statement explaining the delay in filing the birth certificate. The state registrar may accept the certificate for filing if the evidence required by the state registrar is submitted.

(c) A birth certificate filed under this section shall be marked "delayed" and must show on its face the date of registration.

Sec. 192.024. Delay Of Four Years Or More

(a) A birth that occurred four or more years before the date of the application for registration shall be recorded on a form entitled "delayed certificate of birth." the department shall prescribe and furnish the form.

(b) The form shall provide for:

  (1) The name and sex of the person whose birth is to be registered;

  (2) The place and date of the person's birth;

  (3) The names of the person's parents;

  (4) The place of birth of each parent;

  (5) The date of registration; and

  (6) Any other information required by the state registrar.

(c) The information on the form must be subscribed and sworn to, before an official authorized to administer oaths, by:

  (1) The person whose birth is to be registered; or

  (2) The person's parent, legal guardian, or legal representative if the person is incompetent to swear to the information.

(d) The state registrar shall add to a certificate submitted under this section:

  (1) A description of each document submitted in support of the delayed registration, including the title of the document or the type of document;

  (2) The name and address of the affiant if the document is an affidavit of personal knowledge; and

  (3) If the document is a record, or certified copy of a record, of a business entry:

    (A) The name and address of the custodian of the record;

    (B) The date of the original entry; and

    (C) The date of the certified copy.

Sec. 192.025. Supporting Documents

(a) The state registrar shall accept an application under section 192.024 if the applicant's statement of date and place of birth and parentage is established to the state registrar's satisfaction by the evidence required by this section.

(b) The certification of the state registrar shall be added to a certificate accepted for filing under this section.

(c) If the birth occurred at least four years but less than 15 years before the date of the application:

  (1) The statement of date and place of birth must be supported by at least two documents, only one of which may be an affidavit of personal knowledge; and

  (2) The statement of parentage must be supported by at least one document, which may be a document qualifying for submission under subdivision (1).

(d) If the birth occurred 15 or more years before the date of the application:

  (1) The statement of date and place of birth must be supported by at least three documents, only one of which may be an affidavit of personal knowledge; and

  (2) The statement of parentage must be supported by at least one document, which may be a document qualifying for submission under subdivision (1).

(e) A document accepted as evidence under this section, other than an affidavit of personal knowledge, must be at least five years old. A copy or abstract of the document may be accepted if certified as true and correct by the custodian of the document.

Sec. 192.026. Rejection Or Return Of Application

(a) The state registrar may not register a delayed birth certificate if:

  (1) The applicant does not submit the documentary evidence required by section 192.025; or

  (2) The state registrar finds reason to question the validity or adequacy of the certificate or the documentary evidence.

(b) On the state registrar's refusal to register a certificate under subsection (a), the state registrar shall:

  (1) Furnish the applicant a statement of the reasons for the refusal; and

  (2) Advise the applicant of the right to appeal to the county court for probate matters of the county in which the birth occurred, as provided by section 192.027.

(c) If an application to file a delayed birth certificate is not actively pursued, the state registrar shall:

  (1) Return the application, supporting evidence, and any related instruments to the applicant; or

  (2) Make another disposition of those documents that the state registrar considers appropriate.

Sec. 192.027. Registration By Judicial Order

(a) If a delayed birth certificate is not accepted for registration by the state registrar, the person may file a petition in the county probate court of the county in which the birth occurred for an order establishing a record of the person's date of birth, place of birth, and parentage.

(b) The petition must be on a form prescribed and furnished by the department.

(c) The petition must be accompanied by:

  (1) A statement of the state registrar issued under section 192.026(b)(1); and

  (2) The documentary evidence submitted to the state registrar in support of the application.

(d) If the court finds from the evidence presented that the person was born in this state, the court shall:

  (1) Make findings as to the person's date and place of birth and parentage;

  (2) Make other findings required by the case; and

  (3) Enter an order on a form prescribed and furnished by the department to establish a record of birth.

(e) An order under this section must include:

  (1) The birth data to be registered;

  (2) A description of the evidence presented; and

  (3) The date of the court's action.

(f) Not later than the seventh day after the date on which the order is entered, the clerk of the court shall forward the order to the state registrar. The state registrar shall register the order, which is the record of birth.

CHAPTER 193. DEATH RECORDS

Sec. 193.001. Form Of Certificate

(a) The department shall prescribe the form and contents of death certificates and fetal death certificates.

(a-1) In prescribing each form under Subsection (a), the department shall ensure that the form instructs the person required to file the death certificate or fetal death certificate to:

(1) enter the date in the standard order of "month, day, year"; and

(2) spell out the name of the month when entering the date.

(b) The social security number shall be recorded on the death certificate and on any other records related to the death.

(c) The department shall require death certificates and fetal death certificates to include the name of the place and the specific number of the plot, crypt, lawn crypt, or niche in which a decedent's remains will be interred or, if the remains will not be interred, the place and manner of other disposition.

(d) The bureau of vital statistics and each local registrar shall make the information provided under Subsection (c) available to the public and may charge a fee in an amount prescribed under Section 191.0045 for providing that service.

Sec. 193.002. Person Required To File

The person in charge of interment or in charge of removal of a body from a registration district for disposition shall:

(1) obtain and file the death certificate or fetal death certificate;

(2) enter on the certificate the information relating to disposition of the body;

(3) sign the certificate; and

(4) file the certificate electronically as specified by the state registrar.

Sec. 193.003. Time And Place For Filing Death Certificate

(a) Not later than the 10th day after the date of a death that occurs in this state, a death certificate shall be filed with the local registrar of the registration district in which:

(1) the death occurs; or

(2) the body is found, if the place of death is not known.

(b) Subject to board rules, a certificate of a fetal death that occurs in this state shall be filed with the local registrar of the registration district in which:

(1) the fetal death occurs; or

(2) the body is found, if the place of fetal death is not known.

Sec. 193.004. Personal And Medical Information

(a) The person required to file a death certificate shall obtain the required personal information from a competent person with knowledge of the facts.

(b) The person required to file a fetal death certificate shall obtain the required personal information from the person best qualified to furnish the information.

(c) A person required to obtain information under this section shall obtain the information over the signature of the person who furnishes the information.

Sec. 193.0041. Disciplinary Action Prohibited

A state agency that licenses a person required to file a death certificate under this chapter may not take disciplinary action against the person for failure to timely file the certificate if the person supplies written documentation that the person has made a good faith effort to file the certificate within the time required by Section 193.003(a) and the failure to timely file the certificate results from circumstances beyond the person's control.

Sec. 193.005. Personal Information

(a) A person required to file a death certificate or fetal death certificate shall obtain the required medical certification from an attending physician if the death occurred under medical attendance for the care and treatment of the condition or disease process that contributed to the death.

(b) The attending physician shall complete the medical certification not later than five days after receiving the death certificate.

(c) An associate physician, the chief medical officer of the institution where the death occurred, or the physician who performed an autopsy on the decedent may complete the medical certification if:

  (1) the attending physician is unavailable;

  (2) the attending physician approves; and

  (3) the person completing the medical certification has access to the medical history of the case and the death is due to natural causes.

(d) If a death or fetal death occurs without medical attendance or is otherwise subject to Chapter 49, Code of Criminal Procedure, the person required to file the death or fetal death certificate shall notify the appropriate authority of the death.

(e) A person conducting an inquest required by Chapter 49, Code of Criminal Procedure, shall:

  (1) complete the medical certification not later than five days after receiving the death or fetal death certificate; and

  (2) state on the medical certification the disease that caused the death or, if the death was from external causes, the means of death and whether the death was probably accidental, suicidal, or homicidal, and any other information required by the state registrar to properly classify the death.

(f) If the identity of the decedent is unknown, the person conducting the inquest shall obtain and forward to the Department of Public Safety:

  (1) the decedent's fingerprints;

  (2) information concerning the decedent's hair color, eye color, height, weight, deformities, and tattoo marks; and

  (3) other facts required for assistance in identifying the decedent.

(g) If the medical certification cannot be completed in a timely manner, the person required to complete the medical certification shall give the funeral director or the person acting as funeral director notice of the reason for the delay. Final disposition of the body may not be made unless specifically authorized by the person responsible for completing the medical certification.

(h) The person completing the medical certification shall submit the information and attest to its validity using an electronic process approved by the state registrar.

(i) On receipt of autopsy results or other information that would change the information in the medical certification on the death certificate, the appropriate certifier shall immediately report the change in a manner prescribed by the department to amend the death certificate.

(j) The death certificate of a decedent who was an inmate of the Texas Department of Criminal Justice at the time of death and who was lawfully executed shall classify the manner of death as death caused by judicially ordered execution.

Sec. 193.006. Information Relating To Veterans

(a) This section applies to the death certificate of a person who:
  (1) served in a war, campaign, or expedition of the United States, the Confederate States of America, or the Republic of Texas;
  (2) was the wife or widow of a person who served in a war, campaign, or expedition of the United States, the Confederate States of America, or the Republic of Texas; or
  (3) at the time of death was in the service of the United States.

(b) The funeral director or the person in charge of the disposition of the body shall supply on the reverse side of the death certificate:
  (1) the organization in which service was rendered;
  (2) the serial number on the discharge papers or the adjusted service certificate; and
  (3) the name and mailing address of the decedent's next of kin or next friend.

(c) When the death certificate is filed locally, the local registrar shall immediately notify the nearest congressionally chartered veteran organizations.

(d) When the death certificate is filed with the bureau of vital statistics, the state registrar shall notify the Texas Veterans Commission.

Sec. 193.007. Delayed Registration Of Death

(a) A death that occurred more than 10 days but less than one year before the date of an application for registration of death may be recorded on a death certificate and submitted for filing with the local registrar of the registration district in which the death occurred.

(b) To file a record of a death that occurred in this state but was not registered within one year of the date of death, a person shall submit a record of the death to the county probate court in the county in which the death occurred.

(c) The bureau of vital statistics shall furnish a form for filing records under this section. Records submitted under this section must be on the form furnished by the bureau. The state registrar may accept a certificate that is verified as provided by this section.

(d) The certificate must be supported by the affidavit of:
  (1) the physician last in attendance on the decedent or the funeral director who buried the body; or
  (2) if the affidavit of the physician or funeral director cannot be obtained:
    (A) any person who was acquainted with the facts surrounding the death when the death occurred; and
    (B) another person who was acquainted with the facts surrounding the death but who is not related to the decedent by consanguinity or affinity, as determined under Chapter 573, Government Code.

(e) For each application under this section, the court shall collect a $1 fee. The court retains 50 cents of the fee and the remaining 50 cents is allocated to the clerk of the court for recording the certificate.

(f) Not later than the seventh day after the date on which a certificate is accepted and ordered filed by a court under this section, the clerk of the court shall forward to the bureau of vital statistics:
  (1) the certificate; and
  (2) an order from the court that the state registrar accept the certificate.

Sec. 193.008. Burial-Transit Permit

(a) A burial-transit permit issued under the law and rules of a place outside of this state in which a death or fetal death occurred authorizes the transportation of the body in this state. A cemetery or crematory shall accept the permit as authorization for burial, cremation, or other disposal of the body in this state.

(b) The department shall prescribe the form and contents of the burial-transit permit.

Sec. 193.009. Burial Records

(a) The person in charge of premises on which interments are made shall keep a record of the bodies interred or otherwise disposed of on the premises.

(b) The records must include for each decedent:

  (1) the decedent's name;

  (2) the place of death;

  (3) the date of interment or disposal;

  (4) the name and address of the funeral director; and

  (5) any other information required by the state registrar.

(c) The records are open to official inspection at all times.

Sec. 193.010. Certificate Of Death By Catastrophe

(a) In this section, "catastrophe" means the occurrence of a substantial force that causes widespread or severe damage, injury, or loss of life or property and from which it is not reasonable to assume that a person could survive, including:

  (1) flood, earthquake, tornado, or other natural disaster;

  (2) explosion, fire, or destruction of a building;

  (3) the crash of a motor vehicle, train, or airplane involving more than one person; or

  (4) the overtaking of more than one person by fire, water, earth, or other substance.

(b) A local registrar shall issue and file a certificate of death by catastrophe for a person if:

  (1) an affidavit is submitted to the registrar stating that:

    (A) the person was last reasonably believed to be at the scene of a catastrophe;

    (B) at least 10 days have passed since the day of the catastrophe;

    (C) a diligent search has been made by a governmental authority and the authority has concluded the search for the person;

    (D) the catastrophe was not intentionally caused by the person; and

    (E) the affiant:

      (i) does not know whether the person is alive or dead;

      (ii) has not received any information about the person's status since the catastrophe and, barring the person's death, would have received information about the person's status;

      (iii) is not aware of any custody or guardianship issues involving the person, if the person is a minor or a person for whom a guardian has been appointed; and

      (iv) is not aware of any reasonable motive for the person to disappear or for another person to abduct the person; and

  (2) a written statement signed by an agent of the governmental authority that conducts a search under Subdivision (1)(C) is submitted to the registrar stating that the governmental authority conducted and concluded a search for the person.

(c) The department may issue a certificate of death by catastrophe for a minor or a person for whom a guardian has been appointed who is the subject of a custody or guardianship dispute only if all parties to the dispute submit an affidavit under Subsection (b).

(d) An insurer shall accept as proof of death of an insured a certificate of death by catastrophe issued under this section.

Sec. 193.011. Memorandum Of Understanding On Suicide Data

(a) In this section, "authorized entity" means a medical examiner, a local registrar, a local health authority, a local mental health authority, a community mental health center, a mental health center that acts as a collection agent for the suicide data reported by community mental health centers, or any other political subdivision of this state.

(b) An authorized entity may enter into a memorandum of understanding with another authorized entity to share suicide data that does not name a deceased individual. The shared data may include:

  (1) the deceased individual's date of birth, race or national origin, gender, and zip code of residence;
  (2) any school or college the deceased individual was attending at the time of death;
  (3) the suicide method used by the deceased individual;
  (4) the deceased individual's status as a veteran or member of the armed services; and
  (5) the date of the deceased individual's death.

(c) The suicide data an authorized entity receives or provides under Subsection (b) is not confidential.

(d) An authorized entity that receives suicide data under a memorandum of understanding authorized by this section may periodically release suicide data that does not name a deceased individual to an agency or organization with recognized expertise in suicide prevention. The agency or organization may use suicide data received by the agency or organization under this subsection only for suicide prevention purposes.

(e) An authorized entity or an employee or agent of an authorized entity is not civilly or criminally liable for receiving or providing suicide data that does not name a deceased individual and that may be shared under a memorandum of understanding authorized by this section.

(f) This section does not prohibit the sharing of data as authorized by other law.

CHAPTER 194. MARRIAGE AND DIVORCE RECORDS

Sec. 194.001. Report Of Marriage

(a) The county clerk shall file with the bureau of vital statistics a copy of each completed marriage license application and a copy of any affidavit of an absent applicant submitted with an application. The clerk shall file the copies not later than the 90th day after the date of the application. The clerk may not collect a fee for filing the copies.

(b) The county clerk shall file with the bureau of vital statistics a copy of each declaration of informal marriage executed under Section 1.92, Family Code. The clerk shall file the copy not later than the 90th day after the date on which the declaration is executed.

Sec. 194.0011. Marriage License Applications

(a) The board by rule shall prescribe the format and content of the form used for the marriage license application.

(b) The bureau of vital statistics shall print and distribute the forms to each county clerk throughout the state.

(c) The form adopted by the board shall replace locally adopted forms.

(d) A county clerk may reproduce the board's form locally.

Sec. 194.002. Report Of Divorce Or Annulment

(a) The bureau of vital statistics shall prescribe a form for reporting divorces and annulments of marriage. The form must require the following information:

(1) each party's:

(A) full name;

(B) usual residence;

(C) age;

(D) place of birth;

(E) color or race; and

(F) number of children;

(2) the date and place of the parties' marriage;

(3) the date the divorce or annulment of marriage was granted; and

(4) the court and the style and docket number of the case in which the divorce or annulment of marriage was granted.

(b) The bureau of vital statistics shall furnish sufficient copies of the form to each district clerk.

(c) When an attorney presents a final judgment for a divorce or annulment of marriage to a court for a final decree, the attorney shall:

(1) enter on the form the information required under Subsection (a); and

(2) submit the report to the district clerk with the final judgment.

(d) Not later than the ninth day of each month, each district clerk shall file with the bureau of vital statistics a completed report for each divorce or annulment of marriage granted in the district court during the preceding calendar month. If a report does not include the information required by Subsection (a)(3) or (4), the clerk must complete that information on the report before the clerk files the report with the bureau.

(e) For each report that a district clerk files with the bureau of vital statistics under this section, the clerk may collect a $1 fee as costs in the case in which the divorce or annulment of marriage is granted.

(f) If the bureau of vital statistics determines that a report filed with the bureau under this section requires correction, the bureau shall mail the report form directly to an attorney of record with respect to the divorce or annulment of marriage. The attorney shall return the corrected report form to the bureau. If there is no attorney of record, the bureau shall mail the report form to the district clerk for correction.

Sec. 194.003. State Index

(a) The bureau of vital statistics shall maintain a statewide alphabetical index, under the names of both parties, of each marriage license application or declaration of informal marriage. The statewide index does not replace the indexes required in each county.

(b) The bureau of vital statistics shall maintain a statewide alphabetical index, under the names of both parties, of each report of divorce or annulment of marriage.

Sec. 194.004. Release Of Information

(a) The bureau of vital statistics shall furnish on request any information it has on record relating to any marriage, divorce, or annulment of marriage.

(b) The bureau of vital statistics may not issue:

(c) a certificate or a certified copy of information relating to a marriage; or

(d) a certified copy of a report of divorce or annulment of marriage.

(e) Repealed by Acts 1991, 72nd Leg., ch. 14, § 61, eff. Sept. 1, 1991.

(f) Repealed by Acts 1991, 72nd Leg., ch. 14, § 61, eff. Sept. 1, 1991.

Sec. 194.005. Heirloom Wedding Anniversary Certificate

(a) The department shall promote the sale of an heirloom wedding anniversary certificate. The department shall solicit donated designs for the certificate from Texas artists and select the best donated designs for the form of the certificate.

(b) The department shall prescribe a $50 fee for the issuance of an heirloom wedding anniversary certificate.

(c) The executive commissioner of the Health and Human Services Commission shall adopt rules designating certain milestone wedding anniversary dates and shall design and promote heirloom wedding anniversary certificates celebrating those anniversary dates.

(d) The department shall create an heirloom wedding anniversary certificate ordering system that includes printed order forms available through the department and an online ordering system.

(e) An heirloom wedding anniversary certificate produced by the department under this section must be printed on parchment paper and be not smaller than 11 inches by 14 inches in size.

(f) An heirloom wedding anniversary certificate produced by the department under this section is not a marriage license under this chapter or Chapter 2, Family Code, and does not establish and may not be used to establish a marriage relationship.

(g) The department shall deposit proceeds it receives from the issuance of heirloom wedding anniversary certificates to the credit of the childhood immunization account. The childhood immunization account is an account in the general revenue fund. Money in the account may be used only by the department for:

(1) making grants to fund childhood immunizations and related education programs; and

(2) administering this section.

CHAPTER 195. ENFORCEMENT OF VITAL STATISTICS REPORTING

Sec. 195.001. Enforcement Of Title; Reports By Local Registrar

(a) The local registrar in each local registration district shall enforce this title under the supervision and direction of the state registrar.

(b) A local registrar shall report immediately to the state registrar a violation of this title of which the local registrar has knowledge by observation, by complaint of another person, or by other means.

Sec. 195.002. Supervision And Investigation By State Registrar

(a) The state registrar shall execute this title throughout the state. To ensure uniform compliance with this title, the state registrar has supervisory power over local registrars, deputy registrars, and subregistrars.

(b) The state registrar or the state registrar's representative may investigate cases of irregularity or violations of law. On request, any other registrar shall aid in the investigation.

(c) If the state registrar considers it necessary, the state registrar shall report a violation of this title to the appropriate district or county attorney for prosecution. The report must include a statement of the facts and circumstances. The district or county attorney shall immediately initiate and promptly follow up the necessary court proceedings against the person or corporation responsible for the alleged violation.

(d) On the request of the state registrar, the attorney general shall assist in enforcing this title.

Sec. 195.003. False Records

(a) A person commits an offense if the person intentionally or knowingly makes a false statement or directs another person to make a false statement in:
  (1) a certificate, record, or report required under this title;
  (2) an application for an amendment of a certificate, record, or report required under this title;
  (3) an application for a delayed birth certificate or delayed death certificate; or
  (4) an application for a certified copy of a vital record.

(b) A person commits an offense if the person intentionally or knowingly supplies false information, or intentionally or knowingly creates a false record, or directs another person to supply false information or create a false record, for use in the preparation of a certificate, record, report, or amendment under this title.

(c) A person commits an offense if the person, without lawful authority and with intent to deceive, makes, counterfeits, alters, amends, or mutilates or directs another person to make, counterfeit, alter, amend, or mutilate:
  (1) a certificate, record, or report required under this title; or
  (2) a certified copy of a certificate, record, or report required under this title.

(d) A person commits an offense if the person, for purposes of deception, intentionally or knowingly obtains, possesses, uses, sells, or furnishes, or attempts or directs another person to attempt to obtain, possess, use, sell, or furnish a certificate, record, or report required under this title, or a certified copy of a certificate, record, or report required under this title, if the document:
  (1) is made, counterfeited, altered, amended, or mutilated without lawful authority and with intent to deceive;
  (2) is false in whole or in part; or
  (3) relates to the birth of another individual.

(e) A person commits an offense if the person intentionally or knowingly fraudulently identifies himself or herself to obtain or return registration forms, certificates, or any other forms required under this title.

(f) An offense under this section is a felony of the third degree.

(g) In this section, "person" means an individual, corporation, or association.

(h) If a person is convicted of an offense under this section, the court shall order as a condition of probation that the person cannot obtain a certificate, record, or report to which this section applies or practice midwifery, and the Texas Department of Criminal Justice shall require as a condition of parole that the person cannot obtain a certificate, record, or report to which this section applies or practice midwifery.

Sec. 195.004. Failure To Perform Duty

(a) A person commits an offense if the person refuses or fails to furnish correctly any information in the person's possession affecting a certificate or record required under this title.

(b) A person commits an offense if the person fails, neglects, or refuses to fill out a birth or death certificate and to file the certificate with the local registrar or deliver it on request to the person with the duty to file it, as required by this title.

(c) A local registrar, deputy registrar, or subregistrar commits an offense if that person fails, neglects, or refuses to perform a duty under this title or under instructions and directions of the state registrar given under this title.

(d) Except as provided by Subsection (d-1), an offense under this section is a Class C misdemeanor.

(d-1) An offense under this section for failure to perform a duty required by Section 192.003 is a Class A misdemeanor.

(e) In this section, "person" means an individual, corporation, or association.

Sec. 195.005. Disclosure of Confidential Information

(a) A person commits an offense if the person knowingly violates Section 192.002(b), knowingly induces or causes another to violate that section, or knowingly fails to comply with a rule adopted under that section.

(b) An offense under this section is a Class A misdemeanor.

CHAPTER 671. DETERMINATION OF DEATH AND AUTOPSY REPORTS

Subchapter A. Determination Of Death

Sec. 671.001. Standard Used In Determining Death

(a) A person is dead when, according to ordinary standards of medical practice, there is irreversible cessation of the person's spontaneous respiratory and circulatory functions.

(b) If artificial means of support preclude a determination that a person's spontaneous respiratory and circulatory functions have ceased, the person is dead when, in the announced opinion of a physician, according to ordinary standards of medical practice, there is irreversible cessation of all spontaneous brain function. Death occurs when the relevant functions cease.

(c) Death must be pronounced before artificial means of supporting a person's respiratory and circulatory functions are terminated.

(d) A registered nurse or physician assistant may determine and pronounce a person dead in situations other than those described by Subsection (b) if permitted by written policies of a licensed health care facility, institution, or entity providing services to that person. Those policies must include physician assistants who are credentialed or otherwise permitted to practice at the facility, institution, or entity. If the facility, institution, or entity has an organized nursing staff and an organized medical staff or medical consultant, the nursing staff and medical staff or consultant shall jointly develop and approve those policies. The board shall adopt rules to govern policies for facilities, institutions, or entities that do not have organized nursing staffs and organized medical staffs or medical consultants.

Sec. 671.002. Limitation Of Liability

(a) A physician who determines death in accordance with Section 671.001(b) or a registered nurse or physician assistant who determines death in accordance with Section 671.001(d) is not liable for civil damages or subject to criminal prosecution for the physician's, registered nurse's, or physician assistant's actions or the actions of others based on the determination of death.

(b) A person who acts in good faith in reliance on a physician's, registered nurse's, or physician assistant's determination of death is not liable for civil damages or subject to criminal prosecution for the person's actions.

Subchapter B. Autopsy Reports

Sec. 671.011. Definition

(a) In this subchapter, "autopsy report" includes:

  (1) the report of the postmortem examination of the body of a person, including x-rays and photographs taken during the actual postmortem examination; and

  (2) the toxicology report, if any, and other reports that involve an examination of the internal organs and structures of the body after dissection.

(b) An autopsy report does not include investigative reports and other documents that the physician performing the autopsy may review to assist in determining the cause of death.

Sec. 671.012. Filing Autopsy Report

A designated physician who performs an autopsy provided for by state law shall file an autopsy report with the office designated by the autopsy order not later than the 30th day after the date of request for the autopsy unless:

(1) a required test cannot be completed within that time; and

(2) the physician certifies when the autopsy report is filed that a required test could not be completed within the 30-day limit.

Sec. 671.013. Release Of Reports; Fees

(a) An autopsy report shall be released on request to an authorized person in connection with the determination of the cause of death in relation to a workers' compensation or insurance claim.

(b) A person who receives information under Subsection (a) may disclose the information to others only to the extent consistent with the authorized purposes for which the information was obtained.

(c) The commissioners court of the county having custody of an autopsy report shall establish a fee to be charged for a copy of the autopsy report as follows:

(1) for written portions of the report, an amount reasonably necessary to recover the cost of providing the copy, not to exceed $25; and

(2) for x-rays and photographs, the actual cost of reproduction, including the reasonable cost of overhead.

(d) Except as provided by Subsection (e), an autopsy report released in connection with the determination of the cause of death in relation to a workers' compensation claim under Subsection (a) shall be released not later than the 15th business day after the date the request is received from the authorized person.

(e) If the report has not been filed as provided by Section 671.012, a representative of the office designated by the autopsy order shall, not later than the 10th business day after the date of the request, notify the requesting person that the report has not been filed and of the date, to the best of the knowledge of the representative, that the requesting person may anticipate receiving the report.

CHAPTER 674. FETAL AND INFANT MORTALITY REVIEW

Sec. 674.001. Definitions

In this chapter:

(1) "Decedent" means:

(A) a person for whom a fetal death certificate must be filed; or

(B) a deceased infant.

(2) "Fetal death certificate" means a death certificate filed for any fetus weighing 350 grams or more or, if the weight is unknown, a fetus age 20 weeks or more as calculated from the start date of the last normal menstrual period to the date of delivery.

(3) "Health care provider" means any health care practitioner or facility that provides medical evaluation or treatment, including mental health evaluation or treatment.

(4) "Infant" means a child younger than one year of age.

(5) "Local health authority" means:

(A) a municipal or county health authority;

(B) a director of a local health department or public health district; or

(C) a regional director of a public health region.

(6) "Review" means a reexamination of information regarding a decedent from relevant agencies, professionals, health care providers, and the family of the decedent.

(7) "Review team" means the fetal and infant mortality review team.

Sec. 674.002. Review Team

(a) A fetal and infant mortality review team may be established only:

(1) by a local health authority or other local health official or by the Department of State Health Services; or

(2) under a contract or in accordance with a memorandum of agreement with a local health authority or other local health official or the Department of State Health Services.

(b) Local health authorities or other local health officials for two or more adjacent counties or municipalities may join to establish a joint review team.

(c) A review team must be composed of culturally diverse members representing multiple disciplines, including professionals and representatives of agencies that provide services or community resources for families in the community and community representatives. The review team may include:

(1) a physician, including a pediatrician, an obstetrician, or a physician practicing in another relevant specialty;

(2) a registered nurse;

(3) a certified nurse-midwife or licensed midwife;

(4) a county attorney or a designee of a county attorney;

(5) a representative of a school district;

(6) a representative of the local health department;

(7) a forensic pathologist;

(8) a mental health professional;

(9) a representative from a local hospital;

(10) a local registrar of births and deaths;

(11) a person working in a supervisory position in local administration of the state Medicaid program;
(12) a person working with local implementation of the Special Supplemental Nutrition Program for Women, Infants, and Children;
(13) an educator;
(14) a pastoral counselor;
(15) a member of the health committee of a chamber of commerce; and
(16) other community representatives.

(d) Members of a review team may select additional members according to the resources of the review team and its needs.
(e) The review team shall select a presiding officer from its members.
(f) A local health authority or other local health official or the Department of State Health Services is not required to establish a review team for a particular municipality or county.

Sec. 674.003. Purpose And Powers And Duties Of Review Team

(a) The purpose of a review team is to:
(1) improve the health and well-being of women, infants, and families;
(2) reduce racial disparities in the rates of and the overall rates of fetal and infant mortality;
(3) facilitate the operations of the review team and train review team members on the review team process; and
(4) develop and deliver reports of findings to the community.

(b) For a death or fetal death subject to review, the review team shall collect information relating to the death of the decedent, including medical, dental, and mental health care records or information, autopsy reports, social services records, and other pertinent records related to the decedent and the family of the decedent.
(c) Before review at a meeting of the review team, the names and addresses of the decedent and the decedent's family and the name and address of each health care provider that provided services to the decedent or decedent's family shall be removed from information collected under Subsection (b). A summary of the information, with the identifying information described by this subsection removed, shall be prepared for consideration of the review team.
(d) The review team shall:
(1) compile statistics of fetal and infant mortality;
(2) analyze the causes of fetal and infant mortality; and
(3) recommend measures to decrease fetal and infant mortality to a community action team formed for this purpose or to state or local governmental officials or other appropriate members of the community.

Sec. 674.004. Governmental Unit

A review team is a governmental unit for purposes of Chapter 101, Civil Practice and Remedies Code. A review team is a unit of local government under that chapter.

Sec. 674.005. Meetings

(a) Meetings of a review team are closed to the public and are not subject to Chapter 551, Government Code.
(b) A member of a review team participating in the review of a death or fetal death, and any person employed by or acting in an advisory capacity to the review team and who provides counsel or services to the review team, are immune from civil or criminal liability arising from information presented in a review team meeting or recommendations resulting from the meeting.

Sec. 674.006. Disclosure Of Information To Review Team

(a) A review team may request information regarding a decedent or the decedent's family as necessary to carry out the review team's purpose and duties, including any information described by Section 674.003(b).

(b) On the request of the review team, a health care provider or other custodian of the requested information shall provide the information to the review team. The information shall be provided without the authorization of the decedent's parent, guardian, or other representative.

(c) A health care provider or other person who provides information to a review team is not subject to a civil action for damages or other relief as a result of having provided the information. This subsection does not apply if the information provided was false and the health care provider or other person knew or had reason to know that the information was false.

Sec. 674.007. Confidentiality Of Records; Privilege

(a) Information is confidential for purposes of this chapter if the disclosure of the information would compromise the privacy of the decedent or the decedent's family. Confidential information includes any information pertaining to the decedent's death.

(b) Confidential information that is acquired by the review team and that permits the identification of an individual or health care provider is privileged and may not be disclosed to any person except to the extent necessary to carry out the purposes of the review team. Information that may not be disclosed under this subsection includes:

  (1) names and addresses of the decedent or the decedent's family;
  (2) services received by the decedent or the decedent's family;
  (3) the social and economic condition of the decedent or the decedent's family;
  (4) medical, dental, and mental health care information related to the decedent or the decedent's family, including diagnoses, conditions, diseases, or disability; and
  (5) the identity of health care providers that provided services to the decedent or the decedent's family.

(c) Review team work product and information obtained by a review team, including files, records, reports, records of proceedings, recommendations, meeting notes, records of interviews, statements, and memoranda, are confidential and are not subject to disclosure under Chapter 552, Government Code. This subsection does not prevent a review team from releasing information described by Subsection (d) or (e).

(d) Information is not confidential under this section if the information is general information that cannot be connected with any specific individual, case, or health care provider, such as:

  (1) total expenditures made for specified purposes;
  (2) the number of families served by particular health care providers or agencies;
  (3) aggregated data on social and economic conditions;
  (4) medical data and information related to health care services that do not include any identifying information relating to a decedent or the decedent's family; and
  (5) other statistical information.

(e) A review team may publish statistical studies and research reports based on information that is confidential under this section, provided that the information published may not identify a decedent or the decedent's family and may not include any information that could be used to identify a decedent or the decedent's family.

(f) A review team shall adopt and follow practices and procedures to ensure that information that is confidential under this section is not disclosed in violation of this section.

Sec. 674.008. Immunity From Subpoena And Discovery

(a) Review team work product and information obtained by a review team, including files, records, reports, records of proceedings, recommendations, meeting notes, records of interviews, statements, and memoranda, are privileged, are not subject to subpoena or discovery, and may not be introduced into evidence in any civil or criminal proceeding against a member of the family of a decedent or a health care provider.

(b) A document or other information that is otherwise available from another source is not protected from subpoena, discovery, or introduction into evidence under Subsection (a) solely because the document or other information was presented during a meeting of a review team or because a record of the document or other information is maintained by the review team.

Sec. 674.009. Unauthorized Disclosure By Review Team Member; Offense

(a) A person commits an offense if the person is a member of a review team and the person knowingly:

  (1) discloses confidential information in violation of Section 674.007; or

  (2) inspects confidential information without authority granted in accordance with procedures established by the review team.

(b) An offense under Subsection (a) is a Class A misdemeanor.

Sec. 674.010. Immunity

A member of a review team is not liable for damages to a person for an action taken or a recommendation made within the scope of the functions of the review team if the member acts without malice and in the reasonable belief that the action or recommendation is warranted by the facts known to the review team member.

Sec. 674.011. Inapplicability Of Chapter

This chapter does not apply to disclosure of records pertaining to voluntary or therapeutic termination of pregnancy, and those records may not be disclosed under this chapter.

CHAPTER 694. BURIAL

Sec. 694.001. Duties Of Texas Department Of Health

The Texas Department of Health shall regulate the disposal, transportation, interment, and disinterment of dead bodies to the extent reasonable and necessary to protect public health and safety.

Sec. 694.002. Duty Of Commissioners Court Concerning Disposition Of Body Of Deceased Paupers

(a) The commissioners court of each county shall provide for the disposition of the body of a deceased pauper. The commissioners court may adopt rules to implement this section.

(b) The commissioners court shall consider any information, including the religious affiliation of the deceased pauper, provided by a person listed in Section 711.002(a).

(c) If a county discovers cash in the possession of a deceased pauper, a county may use the cash to pay the actual costs incurred by the county in disposing of the pauper's body.

(d) If any cash remains after the county has paid the costs of disposing of the body under Subsection (c), the county shall place the cash in trust. A person having a claim to the money in trust must exercise the right to collect the money not later than the first anniversary of the date of disposition of the pauper's body.

(e) A county may create a fund to be used by the county to pay the costs incurred in disposing of the bodies of deceased paupers and administering the county's body disposition activities. If money placed in a trust under Subsection (d) is not claimed by the first anniversary of the date of disposition of the pauper's body, the county may transfer the money to the fund created under this subsection.

Sec. 694.003. Power Of Governing Body Of Type A General-Law Municipality Concerning Burial

The governing body of a Type A general-law municipality may regulate the burial of the dead.

CHAPTER 695. IN-CASKET IDENTIFICATION

Sec. 695.001. Definitions

In this chapter:

(1) "Casket" means a container used to hold the remains of a deceased person.

(2) "Commission" means the Texas Funeral Service Commission.

Sec. 695.002. Identification Of Deceased Person

The commission shall ensure a casket contains identification of the deceased person, including the person's name, date of birth, and date of death.

Sec. 695.003. Rules

The commission may adopt rules to enforce this chapter.

CHAPTER 711. GENERAL PROVISIONS RELATING TO CEMETERIES

Subchapter A. General Provisions

Sec. 711.001. Definitions

In this chapter:

(1) "Burial park" means a tract of land that is used or intended to be used for interment in graves.

(1-a) "Campus" means the area:

(A) within the boundaries of one or more adjacent tracts, parcels, or lots under common ownership;

(B) on which the principal church building and related structures and facilities of an organized religious society or sect are located; and

(C) that may be subject to one or more easements for street, utility, or pipeline purposes.

(2) "Cemetery" means a place that is used or intended to be used for interment, and includes a graveyard, burial park, mausoleum, or any other area containing one or more graves.

(2-a) "Cemetery element" means a grave, memorial, crypt, mausoleum, columbarium, or other item that is associated with the cemetery, including a fence, road, curb, wall, path, gate, or bench and the lighting and landscaping.

(3) "Cemetery organization" means:

(A) an unincorporated association of plot owners not operated for profit that is authorized by its articles of association to conduct a business for cemetery purposes; or

(B) a corporation, as defined by Section 712.001(b)(3), that is authorized by its certificate of formation or its registration to conduct a business for cemetery purposes.

(4) "Cemetery purpose" means a purpose necessary or incidental to establishing, maintaining, managing, operating, improving, or conducting a cemetery, interring remains, or caring for, preserving, and embellishing cemetery property.

(5) "Columbarium" means a durable, fireproof structure, or a room or other space in a durable, fireproof structure, containing niches and used or intended to be used to contain cremated remains.

(6) "Cremated remains" means the bone fragments remaining after the cremation process, which may include the residue of any foreign materials that were cremated with the human remains.

(7) "Cremation" means the irreversible process of reducing human remains to bone fragments through extreme heat and evaporation, which may include the processing or the pulverization of bone fragments.

(8) "Crematory" means a structure containing a furnace used or intended to be used for the cremation of human remains.

(9) "Crematory and columbarium" means a durable, fireproof structure containing both a crematory and columbarium.

(10) "Crypt" means a chamber in a mausoleum of sufficient size to inter human remains.

(11) "Directors" means the governing body of a cemetery organization.

(12) "Entombment" means interment in a crypt.

(13) "Funeral establishment" means a place of business used in the care and preparation for interment or transportation of human remains, or any place where one or more persons, either as sole owner, in copartnership, or through corporate status, are engaged or represent themselves to be engaged in the business of embalming or funeral directing.

(14) "Grave" means a space of ground that contains interred human remains or is in a burial park and that is used or intended to be used for interment of human remains in the ground.

(15) "Human remains" means the body of a decedent.

(16) "Interment" means the permanent disposition of remains by entombment, burial, or placement in a niche.

(17) "Interment right" means the right to inter the remains of one decedent in a plot.
(18) "Inurnment" means the placement of cremated remains in an urn.
(19) "Lawn crypt" means a subsurface receptacle installed in multiple units for ground burial of human remains.
(20) "Mausoleum" means a durable, fireproof structure used or intended to be used for entombment.
(20-a) "Memorial" means a headstone, tombstone, gravestone, monument, or other marker denoting a grave.
(21) "Niche" means a space in a columbarium used or intended to be used for the placement of cremated remains in an urn or other container.
(22) "Nonperpetual care cemetery" means a cemetery that is not a perpetual care cemetery.
(23) "Perpetual care" or "endowment care" means the maintenance, repair, and care of all places in the cemetery.
(24) "Perpetual care cemetery" or "endowment care cemetery" means a cemetery for the benefit of which a perpetual care trust fund is established as provided by Chapter 712.
(25) "Plot" means space in a cemetery owned by an individual or organization that is used or intended to be used for interment, including a grave or adjoining graves, a crypt or adjoining crypts, a lawn crypt or adjoining lawn crypts, or a niche or adjoining niches.
(26) "Plot owner" means a person:
(A) in whose name a plot is listed in a cemetery organization's office as the owner of the exclusive right of sepulture; or
(B) who holds, from a cemetery organization, a certificate of ownership or other instrument of conveyance of the exclusive right of sepulture in a particular plot in the organization's cemetery.
(27) "Prepaid funeral contract" means a written contract providing for prearranged or prepaid funeral services or funeral merchandise.
(28) "Remains" means either human remains or cremated remains.

Sec. 711.002. Disposition Of Remains; Duty To Inter

(a) Except as provided by Subsection (l), unless a decedent has left directions in writing for the disposition of the decedent's remains as provided in Subsection (g), the following persons, in the priority listed, have the right to control the disposition, including cremation, of the decedent's remains, shall inter the remains, and are liable for the reasonable cost of interment:
(1) the person designated in a written instrument signed by the decedent;
(2) the decedent's surviving spouse;
(3) any one of the decedent's surviving adult children;
(4) either one of the decedent's surviving parents;
(5) any one of the decedent's surviving adult siblings; or
(6) any adult person in the next degree of kinship in the order named by law to inherit the estate of the decedent.

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 95, Sec. 1

(a-1) If a United States Department of Defense Record of Emergency Data, DD Form 93, or a successor form, was in effect at the time of death for a decedent who died in a manner described by 10 U.S.C. Sections 1481(a)(1) through (8), the DD Form 93 controls over any other written instrument described by Subsection (a)(1) or (g) with respect to designating a person to control the disposition of the decedent's remains. Notwithstanding Subsections (b) and (c), the form is legally sufficient if it is properly completed, signed by the decedent, and witnessed in the manner required by the form.

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 532, Sec. 2, and Ch. 1336, Sec. 2

(a-1) If the person with the right to control the disposition of the decedent's remains fails to make final arrangements or appoint another person to make final arrangements for the disposition before the earlier of the 6th day after the date the person received notice of the decedent's death or the 10th day after the date the decedent died, the person is presumed to be unable or unwilling to control the disposition, and:

(1) the person's right to control the disposition is terminated; and

(2) the right to control the disposition is passed to the following persons in the following priority:

(a) any other person in the same priority class under Subsection (a) as the person whose right was terminated; or

(b) a person in a different priority class, in the priority listed in Subsection (a).

(b) The written instrument referred to in Subsection (a)(1) shall be in substantially the following form:

APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS

I, _____,

(your name and address)

being of sound mind, willfully and voluntarily make known my desire that, upon my death, the disposition of my remains shall be controlled by _____

(name of agent)

in accordance with Section 711.002 of the Health and Safety Code and, with respect to that subject only, I hereby appoint such person as my agent (attorney-in-fact).

All decisions made by my agent with respect to the disposition of my remains, including cremation, shall be binding.

SPECIAL DIRECTIONS:

Set forth below are any special directions limiting the power granted to my agent:

_____

_____

_____

_____

_____

AGENT:

Name: _____

Address: _____

Telephone Number: _____

Acceptance of Appointment: _____

(signature of agent)

Date of Signature: _____

SUCCESSORS:

If my agent dies, becomes legally disabled, resigns, or refuses to act, I hereby appoint the following persons (each to act alone and successively, in the order named) to serve as my agent (attorney-in-fact) to control the disposition of my remains as authorized by this document:

1. First Successor

Name: _____

Address: _____

Telephone Number: _____

Acceptance of Appointment: _____
(signature of first successor)
Date of Signature: _____
2. Second Successor
Name: _____
Address: _____
Telephone Number: _____
Acceptance of Appointment: _____
(signature of second successor)
Date of Signature: _____

DURATION:
This appointment becomes effective upon my death.
PRIOR APPOINTMENTS REVOKED:
I hereby revoke any prior appointment of any person to control the disposition of my remains.
RELIANCE:
I hereby agree that any cemetery organization, business operating a crematory or columbarium or both, funeral director or embalmer, or funeral establishment who receives a copy of this document may act under it. Any modification or revocation of this document is not effective as to any such party until that party receives actual notice of the modification or revocation. No such party shall be liable because of reliance on a copy of this document.
ASSUMPTION:
THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS APPOINTMENT, ASSUMES THE OBLIGATIONS PROVIDED IN, AND IS BOUND BY THE PROVISIONS OF, SECTION 711.002 OF THE HEALTH AND SAFETY CODE.
Signed this _____ day of _____, 19___.
_____
(your signature)
State of _____
County of _____
This document was acknowledged before me on _____ (date) by _____ (name of principal).
_____
(signature of notarial officer)
(Seal, if any, of notary)
_____
(printed name)
My commission expires:
_____

(c) A written instrument is legally sufficient under Subsection (a)(1) if the wording of the instrument complies substantially with Subsection (b), the instrument is properly completed, the instrument is signed by the decedent, the agent, and each successor agent, and the signature of the decedent is acknowledged. Such written instrument may be modified or revoked only by a subsequent written instrument that complies with this subsection.

(d) A person listed in Subsection (a) has the right, duty, and liability provided by that subsection only if there is no person in a priority listed before the person.

(e) If there is no person with the duty to inter under Subsection (a) and:

(1) an inquest is held, the person conducting the inquest shall inter the remains; and

(2) an inquest is not held, the county in which the death occurred shall inter the remains.

(f) A person who represents that the person knows the identity of a decedent and, in order to procure the disposition, including cremation, of the decedent's remains, signs an order or statement, other than a death certificate, warrants the identity of the decedent and is liable for all damages that result, directly or indirectly, from that warrant.

(g) A person may provide written directions for the disposition, including cremation, of the person's remains in a will, a prepaid funeral contract, or a written instrument signed and acknowledged by such person. The directions may govern the inscription to be placed on a grave marker attached to any plot in which the decedent had the right of sepulture at the time of death and in which plot the decedent is subsequently interred. The directions may be modified or revoked only by a subsequent writing signed and acknowledged by such person. The person otherwise entitled to control the disposition of a decedent's remains under this section shall faithfully carry out the directions of the decedent to the extent that the decedent's estate or the person controlling the disposition are financially able to do so.

(h) If the directions are in a will, they shall be carried out immediately without the necessity of probate. If the will is not probated or is declared invalid for testamentary purposes, the directions are valid to the extent to which they have been acted on in good faith.

(i) A cemetery organization, a business operating a crematory or columbarium or both, a funeral director or an embalmer, or a funeral establishment shall not be liable for carrying out the written directions of a decedent or the directions of any person who represents that the person is entitled to control the disposition of the decedent's remains.

(j) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 707, Sec. 3, eff. June 17, 2011.

(k) Any dispute among any of the persons listed in Subsection (a) concerning their right to control the disposition, including cremation, of a decedent's remains shall be resolved by a court of competent jurisdiction. A cemetery organization or funeral establishment shall not be liable for refusing to accept the decedent's remains, or to inter or otherwise dispose of the decedent's remains, until it receives a court order or other suitable confirmation that the dispute has been resolved or settled.

(l) A person listed in Subsection (a) may not control the disposition of the decedent's remains if, in connection with the decedent's death, an indictment has been filed charging the person with a crime under Chapter 19, Penal Code, that involves family violence against the decedent.

Sec. 711.003. Records Of Interment

A record shall be kept of each interment in a cemetery. The record must include:

(1) the date the remains are received;
(2) the date the remains are interred;
(3) the name and age of the person interred if those facts can be conveniently obtained; and
(4) the identity of the plot in which the remains are interred.

Sec. 711.004. Removal Of Remains

(a) Remains interred in a cemetery may be removed from a plot in the cemetery with the written consent of the cemetery organization operating the cemetery and the written consent of the current plot owner or owners and the following persons, in the priority listed:
    (1) the decedent's surviving spouse;
    (2) the decedent's surviving adult children;
    (3) the decedent's surviving parents;
    (4) the decedent's adult siblings; or
    (5) the adult person in the next degree of kinship in the order named by law to inherit the estate of the decedent.

(b) A person listed in Subsection (a) may consent to the removal only if there is no person in a priority listed before that person.

(c) If the consent required by Subsection (a) cannot be obtained, the remains may be removed by permission of a district court of the county in which the cemetery is located. Before the date of application to the court for permission to remove remains under this subsection, notice must be given to:
    (1) the cemetery organization operating the cemetery in which the remains are interred or if the cemetery organization cannot be located or does not exist, the Texas Historical Commission;
    (2) each person whose consent is required for removal of the remains under Subsection (a); and
    (3) any other person that the court requires to be served.

(d) For the purposes of Subsection (c) and except as provided by this subsection or Subsection (k), personal notice must be given not later than the 11th day before the date of application to the court for permission to remove the remains, or notice by certified or registered mail must be given not later than the 16th day before the date of application. In an emergency circumstance described by Subsection (l) that necessitates immediate removal of remains from a plot, the court shall hear an application for permission to remove remains under Subsection (c) not later than the first business day after the application is made. In an emergency circumstance described by this subsection, personal notice may be given on the date the application is made.

(e) Subsections (a)-(d) and (k) do not apply to the removal of remains:
    (1) from one plot to another plot in the same cemetery, if the cemetery:
        (A) is a family, fraternal, or community cemetery that is not larger than 10 acres;
        (B) is owned or operated by an unincorporated association of plot owners not operated for profit;
        (C) is owned or operated by a church, a religious society or denomination, or an entity solely administering the temporalities of a church or religious society or denomination; or
        (D) is a public cemetery owned by this state, a county, or a municipality;
    (2) by the cemetery organization from a plot for which the purchase price is past due and unpaid, to another suitable place;
    (3) on the order of a court or person who conducts inquests; or
    (4) from a plot in a cemetery owned and operated by the Veterans' Land Board.

(f) Except as is authorized for a justice of the peace acting as coroner or medical examiner under Chapter 49, Code of Criminal Procedure, remains may not be removed from a cemetery except on the written order of the state registrar or the state registrar's designee. The cemetery organization shall keep a duplicate copy of the order as part of its records. The Texas Funeral Service Commission may adopt rules to implement this subsection.

(g) A person who removes remains from a cemetery shall keep a record of the removal that includes:
  (1) the date the remains are removed;
  (2) the name and age at death of the decedent if those facts can be conveniently obtained;
  (3) the place to which the remains are removed; and
  (4) the cemetery and plot from which the remains are removed.

(h) If the remains are not reinterred, the person who removes the remains shall:
  (1) make and keep a record of the disposition of the remains; and
  (2) not later than the 30th day after the date the remains are removed, provide notice by certified mail to the Texas Funeral Service Commission and the Department of State Health Services of the person's intent not to reinter the remains and the reason the remains will not be reinterred.

(i) A person who removes remains from a cemetery shall give the cemetery organization operating the cemetery a copy of the record made as required by Subsections (g) and (h).

(j) A cemetery organization may remove remains from a plot in the cemetery and transfer the remains to another plot in the same cemetery without the written consent required under Subsection (a) if the cemetery seeks consent by sending written notice by certified mail, return receipt requested, to the last known address of the current owner of the plot from which the remains are to be removed or to the person designated under Subsection (a). The notice must indicate that the remains will be removed, the reason for the removal of the remains, and the proposed location of the reinterment of the remains. The cemetery may transfer the remains to another plot in accordance with this subsection if an objection is not received in response to the notice before the 31st day after the date the notice is sent. A cemetery may not remove remains under this subsection for a fraudulent purpose or to allow the sale of the plot in which the remains are located to another person.

(k) In an emergency circumstance described by Subsection (l) that necessitates immediate removal of remains before the date on which the court is required to hear an application for permission to remove remains under Subsection (d), a cemetery organization may remove remains from a plot in the cemetery and transfer the remains to another plot in the same cemetery without the court hearing. A cemetery association that removes remains under this subsection shall send written notice of the removal by certified mail, return receipt requested, to the last known address of the person designated under Subsection (a) not later than the fifth day after the date the remains are removed. The notice must indicate that the remains were removed, the reason for the removal of the remains, and the location of the reinterment of the remains.

(l) For purposes of Subsections (d) and (k), "emergency circumstance" means:
  (1) a natural disaster; or
  (2) an error in the interment of remains.

Sec. 711.007. Nuisance; Abatement And Injunction

(a) A district court of the county in which a cemetery is located may, by order, abate the cemetery as a nuisance and enjoin its continuance if the cemetery is:
  (1) maintained, located, or used in violation of this chapter or Chapter 712; or
  (2) neglected so that it is offensive to the inhabitants of the surrounding section.

(b) The proceeding may be brought by:
  (1) the attorney general;
  (2) the Banking Commissioner of Texas;

(3) the governing body of a municipality with a population of more than 25,000, if the cemetery is located in the municipality or not farther than five miles from the municipality;
(4) the district attorney of the county, if the cemetery is located in an area of the county not described by Subdivision (3);
(5) the owner of a residence:
(A) in or near the municipality in which the cemetery is located; or
(B) in the area proscribed for the location of a cemetery by Section 711.008;
(6) the Texas Funeral Service Commission; or
(7) the owner of a plot in the cemetery.

(c) The court shall grant a permanent injunction against each person responsible for the nuisance if a cemetery nuisance exists or is threatened.

(d) If a cemetery nuisance under Subsection (a)(2) is located in a municipality, the governing body of the municipality may authorize the removal of all bodies, monuments, tombs, or other similar items from the cemetery to a perpetual care cemetery.

(e) Notice of an action under this section must be provided to the Texas Historical Commission and to the county historical commission of the county in which the cemetery is located. The Texas Historical Commission and the county historical commission may intervene and become parties to the suit.

(f) In an action under this section, the court shall determine:
(1) whether the cemetery nuisance must be abated by repair and restoration or by removal of the cemetery; and
(2) the party or parties liable for the costs associated with the abatement.

Sec. 711.008. Location Of Cemetery

(a) Except as provided by Subsections (b), (f), (g), (h), and (k), an individual, corporation, partnership, firm, trust, or association may not establish or operate a cemetery, or use any land for the interment of remains, located:
(1) in or within one mile of the boundaries of a municipality with a population of 5,000 to 25,000;
(2) in or within two miles of the boundaries of a municipality with a population of 25,000 to 50,000;
(3) in or within three miles of the boundaries of a municipality with a population of 50,000 to 100,000;
(4) in or within four miles of the boundaries of a municipality with a population of 100,000 to 200,000; or
(5) in or within five miles of the boundaries of a municipality with a population of at least 200,000.

Text of subsection as amended by Acts 2011, 82nd Leg., R.S., Ch. 1017, Sec. 1

(b) Subsection (a) does not apply to:
(1) a cemetery heretofore established and operating;
(2) the establishment and use of a columbarium by an organized religious society or sect that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, as part of or attached to the principal church building owned by the society or sect;

(3) the establishment and use of a columbarium by an organized religious society or sect that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, on land that:
    (A) is owned by the society or sect; and
    (B) is part of the campus on which an existing principal church building is located;
(4) the establishment and use of a columbarium on the campus of a private or independent institution of higher education, as defined by Section 61.003, Education Code, that is wholly or substantially controlled, managed, owned, or supported by or otherwise affiliated with an organized religious society or sect that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, if a place of worship is located on the campus;
(5) the establishment and use of a mausoleum that is:
    (A) constructed beneath the principal church building owned by an organized religious society or sect that:
        (i) is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code; and
        (ii) has recognized religious traditions and practices of interring the remains of ordained clergy in or below the principal church building; and
    (B) used only for the interment of the remains of ordained clergy of that organized religious society or sect; or
(6) the establishment and operation, if authorized in accordance with Subsection (h), of a perpetual care cemetery by an organized religious society or sect that:
    (A) is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code;
    (B) has been in existence for at least five years;
    (C) has at least $500,000 in assets; and
    (D) establishes and operates the cemetery on land that:
        (i) is owned by the society or sect;
        (ii) together with any other land owned by the society or sect and adjacent to the land on which the cemetery is located, is not less than 10 acres; and
        (iii) is in a municipality with a population of at least one million that is located predominantly in a county that has a total area of less than 1,000 square miles.

Text of subsection as amended by Acts 2011, 82nd Leg., R.S., Ch. 721, Sec. 1

(b) Subsection (a) does not apply to:
(1) a cemetery heretofore established and operating;
(2) the establishment and use of a columbarium by an organized religious society or sect that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, as part of or attached to the principal church building owned by the society or sect;
(3) the establishment and use of a columbarium by an organized religious society or sect that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, on land that:

(A) is owned by the society or sect; and

(B) is part of the campus on which an existing principal church building is located;

(4) the establishment and use of a columbarium on the campus of a private or independent institution of higher education, as defined by Section 61.003, Education Code, that is wholly or substantially controlled, managed, owned, or supported by or otherwise affiliated with an organized religious society or sect that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, if a place of worship is located on the campus;

(5) the establishment and use of a mausoleum that is:

(A) constructed beneath the principal church building owned by an organized religious society or sect that:

(i) is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code; and

(ii) has recognized religious traditions and practices of interring the remains of ordained clergy in or below the principal church building; and

(B) used only for the interment of the remains of ordained clergy of that organized religious society or sect; or

(6) the establishment and use of a private family cemetery by an organization that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, on land that is:

(A) owned by the organization; and

(B) located in a county:

(i) with a population of more than 125,000; and

(ii) that is adjacent to a county that has a population of more than 1.5 million and in which more than 75 percent of the population lives in a single municipality.

(c) Subsection (a) does not apply to a private family cemetery established and operating on or before September 1, 2009.

(d) Subsection (a) does not apply to a cemetery established and operating before September 1, 1995, in a county with a population of more than 285,000 and less than 300,000 that borders the Gulf of Mexico.

(e) For the purpose of determining where a cemetery may be located under Subsection (a), the boundary of an area annexed by a municipality is not considered to be a boundary of the municipality if no more than 10 percent of the boundary of the annexed area is composed of a part of the boundary of the annexing municipality as it existed immediately before the annexation.

(f) This subsection applies only to a municipality with a population of at least 60,000 that is located in a county with a population of no more than 155,000. Not later than December 1, 2001, a charitable nonprofit corporation may file a written application with the governing body of a municipality to establish or use a cemetery located inside the boundaries of the municipality. The municipality by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of a cemetery located inside the boundaries of the municipality if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare.

(g) Not later than December 1, 2003, a corporation may file a written application with the governing body of a municipality that has a population of at least 27,000 and not more than 30,000 and that is located in a county with a population of at least 245,000 and not more than 250,000 to establish or use a cemetery

located outside the municipality but within two miles of the municipal boundaries. The municipality by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of the cemetery if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare.

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 1017, Sec. 1

(h) The governing body of a municipality described by Subsection (b)(6)(D)(iii) may authorize the establishment and use in accordance with Subsection (b)(6) of a cemetery located inside the boundaries of the municipality if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare.

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 367, Sec. 1

(h) Not later than September 1, 2014, a person may file a written application with the governing body of a municipality to establish or use a cemetery located inside the boundaries of the municipality. The municipality by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of a cemetery located inside the boundaries of the municipality if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare. This subsection applies only to a municipality that:
  (1) is located in three or more counties;
  (2) has a population of 18,000 or more; and
  (3) does not have a cemetery within its boundaries, other than a family cemetery.

(i) (j) Deleted by Acts 1993, 73rd Leg., ch. 634, Sec. 7, eff. Sept. 1, 1993.

(k) This subsection applies only to a municipality with a population of 115,000 or more that is located in a county with a population of less than 132,000. Not later than September 1, 1994, a person may file a written application with the governing body of the municipality to establish or use a cemetery located inside the boundaries of the municipality. The municipality by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of a cemetery located inside the boundaries of the municipality if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare.

Sec. 711.009. Authority Of Cemetery Keeper

(a) The superintendent, sexton, or other person in charge of a cemetery has the same powers, duties, and immunities granted by law to:
  (1) a police officer in the municipality in which the cemetery is located; or
  (2) a constable or sheriff of the county in which the cemetery is located if the cemetery is outside a municipality.

(b) A person who is granted authority under Subsection (a) shall maintain order and enforce the cemetery organization's rules, state law, and municipal ordinances in the cemetery over which that person has charge and as near the cemetery as necessary to protect cemetery property.

(c) This section applies only to a cemetery located in a municipality with a population of 40,000 or more or in a county with a population of 290,000 or more.

Sec. 711.010. Unknown Or Abandoned Cemetery

(a) The owner of property on which an unknown cemetery is discovered or on which an abandoned cemetery is located may not construct improvements on the property in a manner that would further disturb the cemetery until the human remains interred in the cemetery are removed under a written order issued by the state registrar or the state registrar's designee under Section 711.004(f) and under an order of a district court as provided by this section.

(b) On petition of the owner of the property, a district court of the county in which an unknown cemetery is discovered or an abandoned cemetery is located may order the removal of any dedication for cemetery purposes that affects the property if the court finds that the removal of the dedication is in the public interest. If a court orders the removal of a dedication of a cemetery and all human remains on the property have not previously been removed, the court shall order the removal of the human remains from the cemetery to a perpetual care cemetery.

(c) In addition to any notice required by Section 711.004, notice of a petition filed under Subsection (b) must be given to the Texas Historical Commission and to the county historical commission of the county in which the cemetery is located. The Texas Historical Commission and the county historical commission may intervene and become parties to the suit.

Sec. 711.0105. Method Of Removal Of Remains

(a) The removal of remains authorized under this chapter shall be supervised by a cemetery keeper, a licensed funeral director, a medical examiner, a coroner, or a professional archeologist.

(b) The person removing the remains shall make a good faith effort to locate and remove all human remains, any casket or other covering of the remains, and any funerary objects associated with the remains.

(c) Remains that have been moved must be reburied unless a court, medical examiner, coroner, other authorized official, or next of kin approves a different disposition of the remains.

Sec. 711.011. Filing Record Of Unknown Cemetery

(a) A person who discovers an unknown or abandoned cemetery shall file notice of the cemetery with the county clerk of the county in which the cemetery is located not later than the 10th day after the date of the discovery. The notice must contain a legal description of the land on which the unknown or abandoned cemetery was found and describe the approximate location of the cemetery and the evidence of the cemetery that was discovered.

(b) A county clerk may not charge a fee for filing notice under this section.

(c) The county clerk shall send a copy of the notice to the Texas Historical Commission and file the notice in the deed records of the county, with an index entry referencing the land on which the cemetery was discovered.

Sec. 711.012. Rules

(a) The Finance Commission of Texas may adopt rules to enforce and administer Sections 711.003, 711.004, 711.007, 711.008, 711.0105, 711.021-711.024, 711.032-711.036, 711.038, 711.040-711.042, 711.052, 711.061, and 711.062 relating to perpetual care cemeteries.

(b) The Texas Funeral Service Commission may adopt rules, establish procedures, and prescribe forms to enforce and administer Sections 711.003, 711.008, 711.0105, 711.021-711.034, 711.038, 711.0395, 711.041, 711.042, 711.052, 711.061, and 711.062 relating to cemeteries that are not perpetual care cemeteries.

(c) The Texas Historical Commission may adopt rules to:

  (1) enforce and administer Sections 711.010 and 711.011; and

  (2) enforce and administer Sections 711.004, 711.007, 711.0105, 711.035, and 711.036 relating to cemeteries that are not perpetual care cemeteries.

Subchapter D. Enforcement

Sec. 711.051. Enforcement By Attorney General; Proceedings To Forfeit Charter For Noncompliance

(a) A cemetery corporation that violates this chapter or Chapter 712 forfeits the corporation's charter and right to do business in this state unless the corporation corrects the violation before the 91st day after the date of receiving notice of the violation from the attorney general.

(b) When the attorney general learns that a cemetery corporation has violated this chapter or Chapter 712, the attorney general shall serve notice of the violation on the corporation.

(c) If the violation is not corrected before the 91st day after the date of the notice, the attorney general shall bring suit or quo warranto proceedings for the forfeiture of the corporation's charter and dissolution of the corporation in the district court of any county in which the violation occurred.

Sec. 711.0515. Enforcement By Attorney General; Injunctive Relief

In addition to bringing an action under Section 711.051, the attorney general at the request of the Texas Funeral Service Commission may bring an action for injunctive relief to enforce this chapter or a rule or order adopted by the commission under this chapter.

Sec. 711.052. Criminal Penalties

(a) A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person:

  (1) engages in a business for cemetery purposes in this state other than through a corporation organized for that purpose, if a corporation is required by law;

  (2) fails or refuses to keep records of interment as required by Sections 711.003 and 711.004;

  (3) sells, offers to sell, or advertises for sale a plot or the exclusive right of sepulture in a plot for purposes of speculation or investment; or

  (4) represents through advertising or printed material that a retail department will be established for the resale of the plots of plot purchasers, that specific improvements will be made in the cemetery, or that specific merchandise or services will be furnished to a plot owner, unless adequate funds or reserves are created by the cemetery organization for the represented purpose.

(b) A cemetery organization or an officer, agent, or employee of the cemetery organization commits an offense if the cemetery organization, officer, agent, or employee offers any inducement, pecuniary or otherwise, to any person or entity for the purpose of securing or attempting to secure business for that cemetery organization. This subsection does not prohibit the offering or payment by a cemetery organization of any such inducement, pecuniary or otherwise, to an officer, employee, agent, subcontractor, or representative of the cemetery organization.

(c) A cemetery organization or an officer, agent, or employee of the cemetery organization commits an offense if the cemetery organization, officer, agent, or employee of a cemetery organization offers a free plot in a drawing, in a lottery, or in another manner, unless the offer is for the immediate burial of an indigent person.

(d) An offense under this section is a Class A misdemeanor.

Sec. 711.0521. Access To Cemeteries; Criminal Penalties

(a) A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person interferes with a person's reasonable right to ingress and egress under Section 711.041.

(b) An offense under this section is a Class C misdemeanor.

Sec. 711.053. Definition

In this subchapter, "commissioner" means the banking commissioner of Texas.

Sec. 711.054. Enforcement By Finance Commission Of Texas

The Finance Commission of Texas may use remedies available under Chapter 712 to enforce a section listed under Section 711.012(a) relating to perpetual care cemeteries.

Sec. 711.055. Enforcement By Commissioner

(a) Chapter 2001, Government Code, applies to a proceeding under this section.

(b) After notice and opportunity for hearing, the commissioner may impose an administrative penalty on a person who:

  (1) violates this chapter or a final order of the commissioner or rule of the Finance Commission of Texas and does not correct the violation before the 31st day after the date the person receives written notice of the violation from the Texas Department of Banking; or

  (2) engages in a pattern of violations, as determined by the commissioner.

(c) The amount of the penalty for each violation may not exceed $1,000 for each day the violation occurs.

(d) In determining the amount of the penalty, the commissioner shall consider the seriousness of the violation, the person's history of violations, and the person's good faith in attempting to comply with this chapter. The commissioner may collect the penalty in the same manner that a money judgment is enforced in district court.

(e) In addition to any penalty that may be imposed under Subsection (b), the commissioner may bring a civil action against a person to enjoin a violation described in Subsection (b) that has not been corrected within 30 days after receipt by the person of written notice of the violation from the commissioner. The civil action may be brought in the district court of the county in which the cemetery is operated.

(f) The commissioner may issue an order to cease and desist if a violation described in Subsection (b) has not been corrected within 30 days after receipt by the person of written notice of the violation from the commissioner. Any order proposed under this subsection shall be served on the person, shall state the grounds for the proposed order with reasonable certainty, and shall state the proposed effective date, which may not be less than 15 days after receipt by the person. Unless the person requests a hearing within 15 days after the receipt, the order is effective as proposed.

Sec. 711.056. Pattern Of Wilful Disregard

(a) If after a hearing conducted as provided by Chapter 2001, Government Code, the trier of fact finds that a violation of this chapter or a rule of the Finance Commission of Texas establishes a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission, the trier of fact shall recommend to the commissioner that the maximum administrative penalty permitted under Section 711.055 be imposed on the person committing the violation or that the commissioner cancel or not renew the person's permit under Chapter 154, Finance Code, if the person holds such a permit.

(b) For the purposes of this section, violations corrected as provided by Section 711.055 may be included in determining whether a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission exists.

Sec. 711.061. Requirements For Lawn Crypts

(a) A lawn crypt may not be installed unless:

(1) the lawn crypt is constructed of concrete and reinforced steel or other comparably durable material;

(2) the lawn crypt is installed on not less than six inches of rock, gravel, or other drainage material;

(3) the lawn crypt provides a method to drain water out of the lawn crypt;

(4) the outside top surface of the lawn crypt at the time of installation is at least 1-1/2 feet below the surface of the ground as required by Section 714.001(a)(2) and is capable of withstanding the weight of the soil and sod above the top surface and the weight of machinery and equipment normally used in the maintenance of the cemetery;

(5) the lawn crypt is installed in a garden or other section of the cemetery that has been dedicated for lawn crypt interment purposes in accordance with Section 711.034; and

(6) the lawn crypt is installed in multiple units of 10 or more or as prescribed by Subsection (b).

(b) A lawn crypt that is part of a private estate may be installed in fewer than 10 units. For purposes of this subsection, a private estate is a small section of a cemetery that has the following characteristics:

(1) is sold under a single contract;

(2) is usually offset from other burial sites;

(3) allows for interment of several members of the same family or their designees; and

(4) is identified on the plat for cemetery property as a private estate in accordance with Section 711.034.

CHAPTER 712. PERPETUAL CARE CEMETERIES

Subchapter A. General Provisions

Sec. 712.001. Definitions

(a) The definitions provided by Section 711.001 apply to this chapter.

(b) In this chapter:

(1) "Banking department" or "department" means the Banking Department of Texas.

(2) "Commissioner" means the Banking Commissioner of Texas.

(3) "Corporation" means a filing entity or foreign filing entity, as those terms are defined by Section 1.002, Business Organizations Code, or an entity that is organized under this chapter, or any corresponding statute in effect before September 1, 1993, to operate one or more perpetual care cemeteries in this state.

(4) "Fund" means a perpetual care trust fund established by one or more corporations under this chapter or any corresponding statute in effect before September 1, 1993.

(4-a) "Preconstruction trust" means a trust established by a corporation under this chapter for the purpose of administering proceeds from sales of undeveloped mausoleum spaces.

(4-b) "Preconstruction trustee" means the trustee of a preconstruction trust.

(5) "Trustee" means the trustee of a cemetery perpetual care trust fund.

(6) "Undeveloped mausoleum space" means a crypt or niche in a mausoleum or mausoleum section that is designed to contain at least 10 crypt or niche interments and that is not ready for the interment of human remains or cremated remains on the date an interment right pertaining to the mausoleum space is sold. The term does not include a private mausoleum or mausoleum section in which all mausoleum spaces are intended to be sold under a single contract.

Sec. 712.002. Exemptions From Chapter

This chapter does not apply to:

(1) a family, fraternal, or community cemetery that is not larger than 10 acres;

(2) an unincorporated association of plot owners not operated for profit;

(3) a church, a religious society or denomination, or an entity solely administering the temporalities of a church or religious society or denomination; or

(4) a public cemetery owned by this state, a county, or a municipality.

Sec. 712.003. Incorporation Required; Minimum Capital

(a) A perpetual care cemetery may not be operated in this state unless a certificate of formation for a domestic filing entity or registration to transact business for a foreign filing entity is filed with the secretary of state showing:

(1) subscriptions and payments in cash for 100 percent of the entity's ownership or membership interests;

(2) the location of its perpetual care cemetery; and

(2) a certificate showing the deposit in its fund of the minimum amount required under Section 712.004.

(b) A corporation chartered on or after September 5, 1955, and before September 1, 1993, must have a minimum capital of:

(1) $15,000, if the cemetery serves a municipality with a population of less than 15,000;

(2) $30,000, if the cemetery serves a municipality with a population of 15,000 to 25,000; or

(3) $50,000, if the cemetery serves a municipality with a population of at least 25,000.

(c) A corporation chartered on or after September 1, 1993, must have a minimum capital of $75,000.

(d) A nonprofit association or corporation operated solely for the benefit of plot owners seeking to convert a cemetery to a perpetual care cemetery under this chapter is not required to meet the requirements prescribed by this section and Section 712.004 if the cemetery has existed for at least 75 years and the association or corporation has operated the cemetery for the preceding 10 years.

Sec. 712.0031. Notices To Banking Department

(a) Not later than the 30th day after the date a corporation files its articles of incorporation with the secretary of state, the corporation shall notify the banking department in writing of its intent to operate a perpetual care cemetery in this state. The notice shall be accompanied by a filing fee of $500, shall be sworn to and verified under oath by all persons subscribing to the capital stock of the corporation, and shall contain:
  (1) the information required to be provided to the secretary of state under Section 712.003;
  (2) the names and addresses of any other persons or entities who are or will be beneficial owners of the capital stock of the corporation or otherwise share an interest in the ownership of the corporation's capital stock, or who have paid or will pay any portion of the consideration therefor;
  (3) the name and address of any person or entity to whom the capital stock or assets of the corporation are or will be pledged as security for any loan; and
  (4) the name and address of the person who will actively manage the cemetery operations of the corporation along with a brief statement of that person's working experience in the cemetery industry.

(b) A cemetery operations manager must have at least two years of experience in cemetery management.

(c) If the corporation fails to provide to the banking department the information prescribed by Subsection (a), the commissioner may instruct the secretary of state to cancel the corporation's charter and serve notice of the cancellation on the corporation by registered or certified letter, addressed to the corporation's address.

(d) A corporation shall notify the commissioner in writing of any change in the controlling ownership interest of the capital stock of the corporation not later than the 30th day following the change of controlling ownership interest.

Sec. 712.004. Perpetual Care Trust Fund Required

(a) Before obtaining a corporate charter, the incorporators of a corporation chartered on or after September 3, 1945, and before September 1, 1993, must establish a fund by permanently depositing in cash with the trustee of the fund:
  (1) $15,000, if the corporation has capital stock of $15,000;
  (2) $30,000, if the corporation has capital stock of $30,000; or
  (3) $50,000, if the corporation has capital stock of $50,000 or more.

(b) Before obtaining a corporate charter, the incorporators of a corporation chartered on or after September 1, 1993, must establish a fund by permanently depositing in cash with the trustee of the fund an amount of not less than $50,000 for each perpetual care cemetery operated in this state.

(c) The fund shall be permanently set aside and deposited in trust with the trustee in accordance with Subchapter B.

Sec. 712.005. Cancellation Of Charter For Failure To Begin Operation Of Perpetual Care Cemetery

(a) If a corporation chartered under Section 712.003 does not begin actual operation of its perpetual care cemetery for six months after the charter is granted and delivered, the commissioner may instruct the secretary of state to cancel the charter and serve notice of the cancellation on the corporation by registered or certified letter, addressed to the corporation's address.

(b) The commissioner may rescind the order of cancellation on:

  (1) the application of the directors;

  (2) the payment to the commissioner of a penalty set by the commissioner in an amount not to exceed $500;

  (3) the execution and delivery to the commissioner of an agreement to begin actual operation of the perpetual care cemetery not later than one month after the date of the agreement; and

  (4) a proper showing by the trustee that the fund is on deposit.

(c) If the corporation does not begin actual operation as agreed, the commissioner by order may set aside the order of rescission and the cancellation is final. The commissioner shall make a full report of the cancellation to the attorney general for liquidation of the corporation, if liquidation is necessary.

(d) If no sale of the dedicated cemetery property of the corporation is made, a certified copy of the order of cancellation authorizes the trustee to refund the fund to the incorporators who signed the corporation's articles of incorporation.

Sec. 712.007. Notice Of Perpetual Care Required

(a) A corporation shall post a sign at or near a cemetery entrance or administration building and readily accessible to the public.

(b) The sign must contain the following:

  (1) "Perpetual Care Cemetery," or "Endowment Care Cemetery";

  (2) the names and telephone numbers of two of the corporation's officers or directors; and

  (3) the name of each bank or trust company entrusted with the fund.

(c) A corporation must include the following statement in each sales contract, certificate of ownership, or other instrument of conveyance of the exclusive right of sepulture:

(d) "This cemetery is operated as a perpetual care cemetery, which means that a perpetual care fund for its maintenance has been established in conformity with the laws of the State of Texas. Perpetual care means to maintain, repair, and care for the cemetery, including the roads on cemetery property."

(e) The term "endowment care" may be substituted for the term "perpetual care" in the statement required by Subsection (c).

Sec. 712.008. Rules

(a) The Finance Commission of Texas may adopt rules to enforce and administer this chapter, including rules establishing fees to defray the costs of enforcing and administering this chapter.

(b) The Finance Commission of Texas shall adopt rules establishing reasonable standards for:

  (1) timely placement of burial markers or monuments in a perpetual care cemetery; and

  (2) timely response to consumer complaints made to a corporation that operates a perpetual care cemetery.

Sec. 712.009. Limitations On Burials; Damages

(a) The Finance Commission of Texas shall adopt rules to administer and enforce this section.

(b) An individual, corporation, partnership, firm, trust, or association that operates or owns a perpetual care cemetery may not inter the remains of an individual who may have caused the death of another person if:

  (1) the victim is interred in that cemetery; and

  (2) the person having the right to control the disposition of the victim's remains under Section 711.002(a) gives written notice to the cemetery requesting that the individual not be interred in that cemetery if:

    (A) the individual was convicted under Section 19.02, 19.03, 19.05, or 49.08, Penal Code, for causing the death of the victim, or convicted under a similar statute of another state; or

    (B) the individual was identified as causing the death of the victim, in violation of a provision described by Paragraph (A), by the medical examiner or law enforcement agency having jurisdiction over the offense, and the individual dies before being convicted of the offense.

(c) An individual, corporation, partnership, firm, trust, or association that violates Subsection (b) is liable to the person having the right to control the disposition of the victim's remains under Section 711.002(a) for:

  (1) any actual damages incurred;

  (2) punitive damages not to exceed $10,000; and

  (3) reasonable attorney's fees and court costs incurred in an effort to enforce compliance with Subsection (b).

(d) Damages under Subsection (c) may not be assessed if the individual, corporation, partnership, firm, trust, or association that operates the cemetery proves by a preponderance of the evidence that:

  (1) the cemetery is the only cemetery serving the municipality or county in which the victim and individual causing the victim's death lived; and

  (2) the bodies of the victim and individual causing the victim's death were placed as far apart as possible in, or in different parts of, the cemetery.

(e) An individual, corporation, partnership, firm, trust, or association operating or owning a perpetual care cemetery and barred from interring remains of an individual under this section may not be held liable for damages by a person having the right to control the disposition of the individual's remains under Section 711.002(a), including damages for failure to provide for interment under a contract executed before the delivery of the written notice under Subsection (b)(2).

(f) A notice under Subsection (b)(2) expires seven years after the date the notice is delivered. A new notice may be delivered on the expiration of each previous notice.

CHAPTER 713. LOCAL REGULATION OF CEMETERIES

Subchapter A. Municipal Regulation Of Cemeteries

Sec. 713.001. Municipal Cemetery Authorized

The governing body of a municipality may:

(1) purchase, establish, and regulate a cemetery; and

(2) enclose and improve a cemetery owned by the municipality.

Sec. 713.002. Local Trust For Cemetery

(a) A municipality that owns or operates a cemetery or has control of cemetery property may act as a permanent trustee for the perpetual maintenance of the lots and graves in the cemetery.

(b) To act as a trustee, a majority of the municipality's governing body must adopt an ordinance or resolution stating the municipality's willingness and intention to act as a trustee. When the ordinance or resolution is adopted and the trust is accepted, the trust is perpetual.

Sec. 713.003. Local Authority To Receive Gifts; Deposits For Care; Certificates

(a) A municipality that is a trustee for the perpetual maintenance of a cemetery may adopt reasonable rules to receive a gift or grant from any source and to determine the amount necessary for permanent maintenance of a grave or burial lot, including a family lot.

(b) A municipality that is a trustee for any person shall accept the amount the municipality requires for permanent maintenance of a grave or burial lot on behalf of that person or a decedent.

(c) The municipality's acceptance of the deposit is a perpetual trust for the designated grave or burial lot.

(d) On acceptance of the deposit, the municipality's secretary, clerk, or mayor shall issue a certificate in the name of the municipality to the trustee or depositor. The certificate must state:

(1) the depositor's name;

(2) the amount and purpose of the deposit;

(3) the location, as specifically as possible, of the grave, lot, or burial place to be maintained; and

(4) other information required by the municipality.

(e) An individual, association, foundation, or corporation that is interested in the maintenance of a neglected cemetery in a municipality's possession and control may donate funds to the perpetual trust fund to beautify and maintain the entire cemetery or burial grounds generally.

Sec. 713.004. Use Of Funds

(a) A municipality may invest and reinvest deposits under this subchapter in interest-bearing bonds or governmental securities.

(b) The principal of the funds must be kept intact as a principal trust fund, and the fund's trustee may not use those funds.

(c) The income or revenue of the fund must be used for the maintenance and care in a first-class condition of the grave, lot, or burial place for which the funds are donated. Income or revenue that is more than the amount necessary to faithfully accomplish the trust may be used, in the discretion of the trustee, to beautify the entire cemetery or burial grounds generally.

Sec. 713.005. Deposit Records

(a) A municipality that acts as a trustee under this subchapter shall maintain a permanent, well-bound record book including, for each deposit made:
   (1) the name of the depositor, listed in alphabetical order;
   (2) the purpose and amount of the deposit;
   (3) the name and location, as specifically as possible, of the grave, lot, or burial place to be maintained;
   (4) the condition and status of the trust imposed; and
   (5) other information required by the municipality.

(b) A certificate holder under this subchapter may, on payment of the proper cost or recording fee, record the certificate in the deed records of the county in which the cemetery is located. The county clerk shall file, index, and record the certificate in the deed records of that county.

Sec. 713.006. Tax

(a) A municipality acting as a trustee for a cemetery may include in the municipality's annual budget an amount considered necessary for cemetery maintenance.

(b) The municipality may impose a tax on all property in the municipality in an amount not exceeding five cents for each $100 valuation of the property for maintenance of the cemetery, regardless of whether the cemetery is located inside or outside the municipal limits.

Sec. 713.007. Appointment Of Successor Trustee

The district judge of the county in which the cemetery is located shall appoint a suitable successor or trustee to faithfully execute a trust in accordance with this subchapter if the municipality renounces a trust assumed under this subchapter or fails to act as its trustee and:
   (1) the occasion demands the appointment; or
   (2) a vacancy occurs.

Sec. 713.008. Termination Of Municipal Trust By Certain Municipalities

The governing body of a municipality in a county with a population of at least 128,000 but not more than 300,000 may abolish the municipality's perpetual trust fund for a cemetery and use the fund, including both principal and interest, for permanent improvements to the cemetery.

Sec. 713.009. Local Possession And Control Of Unkept Or Abandoned Cemetery

(a) Except as provided by Subsection (i), a municipality with a cemetery inside the municipality's boundaries or extraterritorial jurisdiction may, by resolution, take possession and control of the cemetery on behalf of the public if the cemetery threatens or endangers public health, safety, comfort, or welfare.

(b) If a municipality does not take possession and control of a cemetery under Subsection (a) or acts to take possession and control but does not perform the work required by Subsections (d), (e), and (f), a district court on petition of a resident of the county in which the cemetery is located shall by order appoint a willing nonprofit corporation organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) to act in place of the municipality to protect the public health, safety, comfort, and welfare. The district court and the nonprofit corporation must comply with the requirements of Chapter 715 in assuming responsibility for the cemetery.

(c) In accordance with Chapter 715, a district court appointing a nonprofit corporation has continuing jurisdiction to monitor and review the corporation's operation of the cemetery. The court may, on its own motion, revoke the appointment and appoint another willing nonprofit corporation without the necessity of another petition. The court shall review the subsequent appointment if a county resident petitions for review of the appointment.

(d) A resolution of the municipality or an order of the court under this section must specify that, not later than the 60th day after the date of giving notice of a declaration of intent to take possession and control, the municipality or corporation, as appropriate, shall present a plan to:

(1) remove or repair any fences, walls, or other improvements;

(2) straighten and reset any memorial stones or embellishments that are a threat or danger to public health, safety, comfort, or welfare; and

(3) take proper steps to restore and maintain the premises in an orderly and decent condition.

(e) The notice must be given by mail to all persons shown by the records in the county clerk's office to have an interest in the cemetery, to the Texas Historical Commission, and to all interested persons by publication in a newspaper of general circulation in the municipality.

(f) After taking the action described by Subsection (d), the municipality or corporation shall continue to maintain the cemetery so that it does not endanger the public health, safety, comfort, or welfare. Additional burial spaces may not be offered for sale.

(g) A cemetery in the possession and control of a municipality or corporation under this section must remain open to the public.

(h) A municipality or an officer or employee of the municipality is not civilly or criminally liable for acts performed in the good faith administration of this section.

(i) This section does not apply to:

(1) a perpetual care cemetery incorporated under the laws of this state; or

(2) a private family cemetery.

Sec. 713.010. Private Care Of Graves

This subchapter does not affect the right of a person who has an interest in a grave or burial lot, or who is related within the fifth degree by affinity or consanguinity, as determined under Chapter 573, Government Code, to, or is a direct descendant of, a decedent interred in the cemetery, to beautify or maintain a grave or burial lot individually or at the person's own expense in accordance with reasonable municipal rules.

Sec. 713.011. Maintenance Of Municipal Cemeteries

(a) A municipality that operates or has jurisdiction over a public cemetery shall maintain the cemetery in a condition that does not endanger the public health, safety, comfort, or welfare.

(b) A municipality's responsibility to maintain a cemetery under this section includes:

(1) repairing and maintaining any fences, walls, buildings, roads, or other improvements;

(2) leveling or straightening markers or memorials;

(3) properly maintaining lawns, shrubbery, and other plants;

(4) removing debris, including dead flowers and deteriorated plastic ornaments; and

(5) promptly restoring gravesites following an interment.

Sec. 713.021. County Trust For Cemetery

A commissioners court by resolution may establish a perpetual trust fund to provide maintenance for a neglected or unkept public or private cemetery in the county. The commissioners court shall appoint the county judge as trustee for the fund.

Sec. 713.022. Gifts For Maintenance Of Cemetery

(a) A trustee for a county perpetual trust fund may adopt reasonable rules to receive a gift or grant from any source and to determine the amount necessary for permanent maintenance of the cemetery.
(b) A person who is interested in the maintenance of a neglected or unkept public or private cemetery in the county may make a gift to the trust fund for maintenance of the cemetery.
(c) The trustee's acceptance of the gift is a perpetual trust for the maintenance of the cemetery.
(d) On acceptance of the gift, the trustee shall instruct the county treasurer to issue a certificate to the donor. The certificate must state:
    (1) the amount and purpose of the gift; and
    (2) other information determined necessary by the trustee.

Sec. 713.023. Use Of Funds

(a) The trustee may invest the fund in interest-bearing bonds or federal, state, or local government securities.
(b) The principal of the fund must be kept intact as a permanent principal trust fund.
(c) The income or revenue of the fund may be used only for maintenance of a neglected or unkept public or private cemetery in the county.

Sec. 713.024. Appointment Of Successor Trustee

If a county judge who is acting as a trustee under this subchapter vacates the office or renounces the trust, the district judge shall appoint a person, other than a county commissioner, as successor trustee to execute the trust.

Sec. 713.025. Private Care Of Graves

This subchapter does not affect the right of a person to maintain a grave or burial lot in a cemetery if the person:

(1) has an interest in the grave or burial lot; or
(2) is related within the fifth degree by affinity or consanguinity, as determined under Chapter 573, Government Code, to, or is a direct descendant of, a decedent interred in a cemetery maintained by a trustee under this subchapter.

Sec. 713.026. Use Of Public Funds And Property Prohibited; Exceptions

(a) Except as provided by Sections 713.027 and 713.028, a trustee of a fund established under this subchapter or a member of the commissioners court or any other elected county officer may not pay or use public funds or county employees, equipment, or property to maintain a neglected or unkept public or private cemetery.

(b) Subsection (a) does not apply to a county if:

(1) the county owned the cemetery from September 1, 1976, through January 1, 1979; or

(2) the county used county funds, employees, equipment, or property to maintain a county-owned cemetery during 1976.

(c) A county described by Subsection (b)(1) or (2) may continue to own the cemetery or to provide maintenance for the cemetery that qualified the county for the exception if the county files with the secretary of state a certified copy of a commissioners court order certifying that the county qualifies to own or maintain a cemetery under this section. The order must be kept in a register entitled "County-Owned and -Operated Cemeteries."

Sec. 713.027. Cemetery Owned By County Of 8,200 Or Less

(a) A county with a population of 8,200 or less may own, operate, and maintain a cemetery and sell the right of burial in the cemetery.

(b) The sale of the right of burial is exempt from the requirements of Sections 263.001-263.006, Local Government Code.

(c) Revenue received from the sale of the right of burial may be used to purchase additional land for cemetery purposes and for maintenance of county cemetery property.

(d) The commissioners court of the county may spend money in the general fund to maintain a public cemetery in the county and may dedicate not more than one-eighth of the maximum allowable tax levy for that purpose.

(e) The commissioners court of the county serves as the county cemetery board and shall manage cemetery property.

Sec. 713.028. County Care Of Cemetery Older Than 50 Years

(a) For purposes of historical preservation or public health, safety, or welfare, a commissioners court may use public funds, county employees, county inmate labor as provided by Article 43.10, Code of Criminal Procedure, and county equipment to maintain a cemetery that has a grave marker more than 50 years old.

(b) This section does not apply to a perpetual care cemetery or a cemetery maintained by a religious or fraternal organization.

(c) At the discretion of the commissioners court, a county may permit the use of public funds, county employees, county inmate labor as provided by Article 43.10, Code of Criminal Procedure, and county equipment to open and close graves in a cemetery described by Subsection (a).

Sec. 713.029. County Authority To Purchase Burial Grounds For Veterans

(a) A commissioners court may purchase burial grounds to be used exclusively for the burial of honorably discharged persons who:

(1) have served in the United States armed forces during a war in which the United States participated; and

(2) die without leaving sufficient means to pay funeral expenses.

(b) A commissioners court may not purchase burial grounds under this section if there is a national military cemetery or other military plot in the county in which honorably discharged veterans of the United States armed forces may be buried free of charge.

CHAPTER 714. MISCELLANEOUS PROVISIONS RELATING TO CEMETERIES

Sec. 714.001. Depth Of Graves; Criminal Penalty

(a) The body of a decedent may not be buried in a manner so that the outside top surface of the container of the body is:

  (1) less than two feet below the surface of the ground if the container is not made of an impermeable material; or

  (2) less than 1-1/2 feet below the surface of the ground if the container is made of an impermeable material.

(b) The governing body of a political subdivision of this state may, because of subsurface soil conditions or other relevant considerations, permit, by ordinance or rule, burials in that political subdivision at a shallower depth than that required by Subsection (a).

(c) This section does not apply to burials in a sealed surface reinforced concrete burial vault.

(d) A person commits an offense if the person buries the body of a decedent in violation of this section or in violation of an ordinance or rule adopted under this section.

(e) An offense under this section is a misdemeanor punishable by a fine of not less than $100 or more than $200.

Sec. 714.002. Limitation On Location Of Feed Or Slaughter Pens Near Cemetery

(a) The maintenance or location of a feed pen for hogs, cattle, or horses, a slaughter pen, or a slaughterhouse 500 feet or nearer to an established cemetery in a county with a population of at least 525,000 is a nuisance.

(b) The cemetery owner or a lot owner may bring suit to abate the nuisance and to prohibit its continuance. If a nuisance under this section exists or is threatened, the court shall grant a permanent injunction against the person responsible for the nuisance.

Sec. 714.003. Abandoned Plots In Private Cemeteries

(a) The ownership or right of sepulture in an unoccupied plot for which adequate perpetual care has not been provided in a private cemetery operated by a nonprofit organization reverts to the cemetery on a finding by a court that the plot is abandoned. A cemetery may convey title to any plot that has reverted to the cemetery.

(b) A plot is presumed to be abandoned if for 10 consecutive years an owner or an owner's successor in interest does not:

  (1) maintain the plot in a condition consistent with other plots in the cemetery; or

  (2) pay any assessments for maintenance charged by the cemetery.

(c) An owner or an owner's successors in interest may rebut the presumption of abandonment by:

  (1) delivering to the governing body or by filing with the court written notice claiming ownership of or right of sepulture in the plot; and

  (2) paying the cemetery for any past due maintenance charges on the plot plus interest at the maximum legal rate.

(d) A notice for rebuttal of a presumption must be given by delivery in person or by prepaid United States mail, properly addressed. If the notice is mailed, delivery is effective on the date the envelope containing the notice is postmarked.

(e) The governing body may petition a court of competent jurisdiction for an order declaring that a plot is abandoned if, not later than the 91st day and not earlier than the 120th day before the date the petition is filed, the governing body gives written notice of its claim of the plot to the owner or, if the owner is deceased or his address is unknown, to the owner's known successors in interest. The notice must be delivered in person or by prepaid United States mail, sent to the last known address of the owner or the owner's successors in interest.

(f) If after reasonable effort the governing body cannot locate or ascertain the identity of an owner or an owner's successors in interest, the governing body must give the notice required by this section by publishing it once each week for four consecutive weeks in a newspaper of general circulation in the county in which the cemetery is located.

(g) After deducting reasonable expenses related to the reacquisition and sale of an abandoned plot, including restoration, expenses of the sale, court costs and legal fees, a cemetery shall deposit the balance of the funds from the sale of the plot into an account to be used for the care of the cemetery.

(h) This section prevails over Sections 711.035, 711.036, 711.038, 711.039, and 711.040 to the extent of any conflict.

(i) In this section:

(1) "Governing body" means the person in a nonprofit organization responsible for conducting a cemetery business.

(2) "Nonprofit organization" means an organization described by Section 501(c)(13), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(13)).

(3) "Plot" means a grave space in a cemetery that has not been used to inter human remains.

(4) "Private cemetery" means a cemetery that is not owned or operated by the United States, this state, or a political subdivision of this state, but is owned and operated by a nonprofit organization.

Sec. 714.004. Removal Of Remains From Abandoned Cemetery In County Of At Least 525,000

(a) If an abandoned and neglected cemetery in a county with a population of at least 525,000 for which no perpetual care and endowment fund has been regularly and legally established is abated as a nuisance, the court abating the nuisance and enjoining its continuance or the governing body of the municipality in which the cemetery is located may authorize the removal of all bodies, monuments, tombs, and other similar items from the cemetery to a perpetual care cemetery as defined by Section 711.001.

(b) If there is no perpetual care cemetery in the county that under its rules permits the interment of the bodies of the persons that are to be removed, the bodies, monuments, tombs, and other similar items may be removed to a nonperpetual care cemetery that has provided for assessments for the cemetery's future care.

CHAPTER 715. CERTAIN HISTORIC CEMETERIES

Sec. 715.001. Definitions

In this chapter:

(1) "Burial park," "cemetery purposes," "crematory," "mausoleum," and "plot" have the meanings assigned by Section 711.001.

(2) "Cemetery" means a place that is used for interment, including a graveyard, burial park, or a mausoleum located on the grounds of a graveyard or burial park.

(3) "Nonprofit corporation" means a corporation not for profit subject to the provisions of the Texas Non-Profit Corporation Act (Article 1396-1.01, et seq., Vernon's Texas Civil Statutes).

Sec. 715.002. Petition Of Nonprofit Corporation

A nonprofit corporation organized under this chapter to restore, operate, and maintain a historic cemetery may petition the district court of the county in which the cemetery is located to authorize the nonprofit corporation to restore, operate, and maintain the cemetery.

Sec. 715.003. Parties To Action

An action commenced under this chapter shall be brought by the incorporators of the nonprofit corporation on behalf of the nonprofit corporation. The necessary parties to the action on which citation shall be served under Section 715.006 are:

(1) the record owners of the real property comprising the historic cemetery;

(2) the owners of plots in the cemetery, who may be designated as a class in the petition;

(3) the Texas Historical Commission; and

(4) the Texas Funeral Service Commission.

Sec. 715.004. Contents Of Petition

(a) A petition filed by a nonprofit corporation under this chapter must contain a legal description of the real property comprising the historic cemetery and must aver to the court that:

(1) the nonprofit corporation, through its members and incorporators, has a religious, ethnic, historic, or cultural relationship to the cemetery;

(2) the cemetery was established more than 75 years before the date the action was commenced;

(3) a viable organization of plot owners of the cemetery does not exist; and

(4) the cemetery threatens or endangers the public health, safety, comfort, or welfare.

(b) The petition must be accompanied by the written plan described by Section 715.005.

Sec. 715.005. Written Plan

(a) The written plan accompanying the nonprofit corporation's petition must include:

(1) a description of the actions to be taken by the nonprofit corporation to restore, operate, and maintain the historic cemetery, which must include:

(A) repair of any fences;

(B) straightening, leveling, and resetting of memorials or embellishments in the cemetery that are a threat or danger to the public health, safety, comfort, or welfare;

(C) taking proper steps to restore and continuously operate and maintain the cemetery in an orderly and decent fashion that does not endanger the public health, safety, comfort, or welfare;
(D) restoration of damaged memorials; and
(E) restoration and maintenance of cemetery elements as defined by Section 711.001;

(2) the anticipated costs of the actions described under Subdivision (1);
(3) the time that the actions described by Subdivision (1) will be commenced and the time that it is anticipated the actions will be completed;
(4) a description of the actions to be taken by the nonprofit corporation for the proper conduct of its business and for the protection of the cemetery and the principles, plans, and ideals on which the cemetery was established;
(5) the percentage of the total purchase price of each plot in the cemetery sold and conveyed by the nonprofit corporation to be deposited in the trust fund established under Section 715.011, which must be at least 10 percent of the total purchase price of the plot; and
(6) a description of the records to be maintained by the nonprofit corporation, including records regarding:

(A) the sale of plots in the cemetery;
(B) the interments in the cemetery;
(C) the total purchase price received from the sale of each plot in the cemetery;
(D) the percentage of the total purchase price of each plot in the cemetery deposited in the trust fund established under Section 715.011; and
(E) the income received by the nonprofit corporation from the trust fund established under Section 715.011 and the manner in which the income is used by the nonprofit corporation for the maintenance and care of the cemetery.

(b) After the written plan is filed, the court may require that the nonprofit corporation modify the plan to include other matters specified by the court.

Sec. 715.006. Service Of Citation

(a) Before the 31st day after the date an action is commenced by a nonprofit corporation under this chapter, the nonprofit corporation shall cause citation to be issued and served by certified mail, return receipt requested, on:
(1) the record owners of the real property comprising the cemetery at their last known addresses;
(2) the owners of plots in the cemetery at their last known addresses;
(3) the Texas Historical Commission at its office in Austin, Texas;
(4) the Texas Funeral Service Commission; and
(5) the county auditor of the county in which the cemetery is located.

(b) The citation must be accompanied by a copy of the petition.
(c) If the address or identity of a plot owner is not known and cannot be ascertained with reasonable diligence, service by publication shall be made on the plot owner by publishing notice at least three times in a newspaper of general circulation in the county in which the cemetery is located. If there is not a newspaper of general circulation in the county in which the cemetery is located, the notice may be published in a newspaper of general circulation in an adjoining county.

Sec. 715.007. Hearing

(a) Not later than the 90th day after the date the petition is filed, the court shall hold a hearing on the petition.
(b) Notice of the hearing shall be given by the nonprofit corporation to the parties listed in Section 715.003 not later than the 30th day before the date of the hearing.
(c) The notice shall be given in the manner prescribed by Section 715.006 for service of citation.
(d) At the hearing, each of the parties listed in Section 715.003 shall be given an opportunity to be heard by the court and to answer the petition of the nonprofit corporation.

Sec. 715.008. Court Order

(a) The court shall issue an order authorizing the nonprofit corporation to restore, operate, and maintain the cemetery if the court finds that:
    (1) the facts stated in the petition filed by a nonprofit corporation under this chapter are true and correct;
    (2) the written plan accompanying the petition demonstrates the nonprofit corporation's ability to restore, operate, and maintain the historic cemetery in accordance with this chapter; and
    (3) authorizing the nonprofit corporation to restore, operate, and maintain the cemetery is in the best interest of the public.
(b) The written plan must be incorporated in the court's order.
(c) The court's order is binding on all parties to the action.
(d) The court retains continuing jurisdiction to monitor and review compliance with the court's order.

Sec. 715.009. Nonprofit Corporation

(a) The members of a nonprofit corporation authorized to restore, operate, and maintain a historic cemetery are the plot and property owners of the cemetery.
(b) Each plot owner may exercise the rights and privileges of a member of the nonprofit corporation without regard to whether the plot owner acquired the plot before or after the nonprofit corporation was organized.

Sec. 715.010. Organizational Meeting

(a) A nonprofit corporation authorized to restore, operate, and maintain a historic cemetery shall, not later than the 10th day after the date of the order of the court under Section 715.008:
    (1) publish notice of the time and place of the organizational meeting of the members of the nonprofit corporation in a newspaper having general circulation in the county in which the cemetery is located or, if there is no newspaper of general circulation in the county in which the cemetery is located, in a newspaper of general circulation in an adjoining county; and
    (2) post written notice of the time and place of the meeting at the cemetery.
(b) The notice published under Subsection (a)(1) must be published not later than the 30th day before the date of the meeting and repeated twice before the date of the meeting. The notice may not be published more than once a week.
(c) The written notice posted under Subsection (a)(2) must be posted not later than the 30th day before the date of the hearing and must remain posted until the date of the hearing.
(d) At the organizational meeting of the members of a nonprofit corporation authorized to restore, operate, and maintain a historic cemetery, a majority of the members present and voting at the meeting shall elect a board of directors of the nonprofit corporation. Directors and officers are not required to be members of the nonprofit corporation.

Sec. 715.011. Powers And Duties Of Nonprofit Corporation; Trust Fund

(a) A nonprofit corporation authorized to restore, operate, and maintain a historic cemetery may divide cemetery property into lots and subdivisions for cemetery purposes and charge reasonable assessments on the property for the purposes of general improvement and maintenance of the cemetery.

(b) The nonprofit corporation may sell and convey the exclusive right of sepulture in any unsold plot in the cemetery if, before the sale and conveyance of any right of sepulture, the nonprofit corporation establishes a trust fund to provide for the perpetual maintenance of the cemetery.

(c) The county auditor of the county in which the cemetery is located shall act as the trustee of the trust fund.

(d) The nonprofit corporation shall deposit in the trust fund the amount required under the written plan incorporated in the court's order not later than the 20th day after the last day of the month in which the total purchase price of a plot has been paid in full.

(e) The nonprofit corporation shall file a monthly statement with the county auditor, signed by the president and secretary of the nonprofit corporation, that verifies that all funds required to be deposited in the trust fund during the preceding month have been deposited in the trust fund and that any income disbursed from the trust fund during the preceding month was used by the nonprofit corporation for the maintenance and care of the cemetery.

(f) The principal of a trust fund established under this section may not be reduced voluntarily, and it must remain inviolable.

(g) The trust fund and the trustee are governed by Title 9, Property Code.

(h) The trustee may receive and hold as part of the trust fund any property contributed as a gift or grant to the trust fund for the perpetual maintenance of the historic cemetery.

(i) The income of the trust fund may be applied in the manner the directors of the nonprofit corporation determine to be for the best interest of the cemetery and may be used only for the maintenance and care of the cemetery.

(j) A district court of the county in which the historic cemetery is located shall appoint a suitable successor trustee of a trust fund established under this section if the county auditor resigns the position of trustee of the trust fund or fails to act as its trustee.

(k) The county auditor or other person who acts as the trustee of a trust fund established under this section is not civilly or criminally liable for acts performed in the good faith administration of the trust fund.

Sec. 715.012. Crematory Prohibited

A nonprofit corporation authorized to restore, operate, and maintain a cemetery under this chapter may not construct, establish, or maintain a crematory.

Sec. 715.013. Adjacent Or Contiguous Cemetery

A nonprofit corporation authorized to restore, operate, and maintain a historic cemetery may not acquire land for cemetery purposes that is adjacent or contiguous to the cemetery unless the adjacent or contiguous land is operated as a perpetual care cemetery under Chapter 712. The nonprofit corporation may not petition the district court of the county in which the cemetery is located to remove the dedication with respect to all or any portion of the cemetery.

Sec. 715.014. Cemetery Open To Public

A historic cemetery restored, operated, and maintained by a nonprofit corporation under this chapter must remain open to the public.

Sec. 715.015. Exemption

This chapter does not apply to:

(1) a perpetual care cemetery; or

(2) a family cemetery.

CHAPTER 716. CREMATORIES

Subchapter A. General Provisions

Sec. 716.001. Definitions

In this chapter:

(1) "Authorizing agent" means a person authorized to dispose of a decedent's remains under Section 711.002.

(2) "Cemetery" has the meaning assigned by Section 711.001.

(3) "Commission" means the Texas Funeral Service Commission.

(4) "Cremated remains" means the recoverable human remains after the completion of the cremation process. The term may include the residue of any nonhuman matter cremated with the deceased human body including casket material, bridgework, eyeglasses, or other material.

(5) "Cremation" means the irreversible process of reducing human remains to bone fragments through direct flame, extreme heat, and evaporation. The term may include pulverization, which is the process of reducing identifiable bone fragments after cremation and processing granulated particles by manual or mechanical means.

(6) "Cremation chamber" means an enclosed retort used exclusively for cremation of human remains.

(7) "Cremation container" means a casket or other container designed to transport a deceased human body and for placement in a cremation chamber during cremation.

(8) "Cremation interment container" means a rigid outer container composed of concrete, steel, fiberglass, or similar material used for the ground burial of cremated remains that meets a cemetery's specifications.

(9) "Crematory" means a structure containing a retort used or intended to be used for cremation of human remains.

(10) "Crematory establishment" means a business that operates a crematory for which a license is required under Subchapter N, Chapter 651, Occupations Code.

(11) "Funeral director" has the meaning assigned by Section 651.001, Occupations Code.

(12) "Funeral establishment" has the meaning assigned by Section 651.001, Occupations Code.

(13) "Scattering area" means an area designated for scattering cremated remains. The term includes dedicated cemetery property on which cremated remains may be:

(A) mixed with or placed on top of soil or ground cover; or

(B) commingled and buried in an underground receptacle.

(14) "Temporary container" means a receptacle composed of cardboard, plastic, or similar material designed to temporarily store cremated remains until the remains are placed in an urn or other permanent container.

(15) "Urn" means a container designed to permanently store cremated remains.

Sec. 716.002. Cremation Rules

The commission may adopt rules consistent with this chapter and Chapter 651, Occupations Code, to govern the cremation of human remains.

Sec. 716.003. Location Of Crematory

(a) A crematory may be constructed on or adjacent to a perpetual care cemetery or adjacent to a funeral establishment.

(b) A crematory, other than a crematory registered with the commission on September 1, 2003, must:

  (1) be adjacent to a perpetual care cemetery or funeral establishment; and

  (2) be owned or operated by the person that owns or operates the perpetual care cemetery or funeral establishment.

(c) In this section, "adjacent to" means that a part of the property on which the crematory is to be constructed has a common boundary with:

  (1) the perpetual care cemetery or property on which the funeral establishment is located; or

  (2) a public easement, a utility easement, or a railroad right-of-way that has a common boundary with the perpetual care cemetery or property on which the funeral establishment is located.

Sec. 716.0035. Acceptance Of Remains

A crematory establishment may accept deceased human remains for refrigeration before it receives authorization to cremate the remains under Subchapter B.

Sec. 716.004. Waiting Period For Cremation

(a) A crematory establishment may not cremate human remains within 48 hours of the time of death indicated on a death certificate unless the waiting period is waived in writing by:

  (1) a justice of the peace or medical examiner of the county in which the death occurred; or

  (2) a court order.

(b) Repealed by Acts 2009, 81st Leg., R.S., Ch. 263, Sec. 33(1), eff. September 1, 2009.

Sec. 716.005. Crematory Establishment Procedures

A crematory establishment may adopt procedures not inconsistent with this chapter for the management and operation of a crematory.

Sec. 716.006. Applicability Of Chapter To Other Law

This chapter may not be construed to require a funeral director to perform any act not otherwise authorized by other law.

Subchapter B. Authorization Requirements

Sec. 716.051. Cremation Authorization

Except as otherwise provided in this chapter, a crematory establishment may not cremate deceased human remains until it receives:

(1) a cremation authorization form signed by an authorizing agent; and

(2) a death certificate or other death record that indicates the deceased human remains may be cremated.

Sec. 716.052. Cremation Authorization Form

(a) A cremation authorization form must:

(1) identify the deceased person and the time and date of death;

(2) include the name and address of the funeral director or other person that contracted to provide for the cremation;

(3) identify the authorizing agent and the relationship between the authorizing agent and the deceased person;

(4) include a statement by the authorizing agent that:

(A) the authorizing agent has the right to authorize the cremation of the deceased person and is not aware of any person with a superior or equal priority right; or

(B) if another person has an equal priority right to authorize cremation, the authorizing agent:

(i) has made all reasonable efforts but failed to contact that person and believes the person would not object to the cremation; and

(ii) agrees to indemnify and hold harmless the funeral establishment and the crematory establishment for any liability arising from performing the cremation without the person's authorization;

(5) authorize the crematory establishment to cremate the human remains;

(6) declare that to their knowledge the human remains do not contain a pacemaker or any other material or implant that may potentially be hazardous or cause damage to the cremation chamber or the person performing the cremation;

(7) include the name of the funeral establishment or other person authorized to receive the cremated remains from the crematory establishment;

(8) detail the manner of permanent disposition of the cremated remains, if known;

(9) list any items of value delivered to the crematory establishment along with the human remains and include instructions on the handling of the items;

(10) specify whether the authorizing agent has arranged for a viewing of the deceased person or service with the deceased person present before cremation and the date and time of the viewing or service; and

(11) include the signature of the authorizing agent attesting to the accuracy of all representations contained on the cremation authorization form.

(a) A cremation authorization form must include a written notice to the authorizing agent that:

(1) the authorizing agent assumes responsibility for the disposition of the cremated remains; and

(2) the crematory establishment may:

(A) release to the authorizing agent, in person, the cremated remains of the deceased person;

(B) ship the cremated remains to the authorizing agent if the agent authorizes shipment and provides a shipping address on the authorization form; or

(C) dispose of the cremated remains in accordance with this chapter not earlier than the 121st day following the date of cremation if the cremated remains have not been claimed by the authorizing agent.

(b) A funeral director or other representative of a funeral establishment that contracts to provide for the cremation of deceased human remains must sign the cremation authorization form.

(c) A crematory establishment shall provide a cremation authorization form to an authorizing agent on request.

Sec. 716.053. Delegation Of Cremation Authorization Authority

(a) An authorizing agent may delegate to a representative in writing the authority to execute a cremation authorization form.

(b) An authorizing agent's written delegation of authority must be notarized and include:

(1) the name and address of the authorizing agent and the relationship of the authorizing agent to the deceased person;

(2) the name and address of the representative; and

(3) an acknowledgment by the authorizing agent that the representative may serve as the authorizing agent and execute the cremation authorization form.

(c) A crematory establishment is not liable in a civil action for relying on a cremation authorization form executed by a representative of the authorizing agent to whom authority is delegated in accordance with this section.

Sec. 716.054. Exception; Written Directions

(a) This section applies and a cremation authorization form is not required under this chapter if:

(1) the deceased person has left written directions for the disposition by cremation of the deceased person's human remains as provided by Section 711.002(g); and

(2) the authorizing agent refuses for any reason to sign a cremation authorization form.

(b) The crematory establishment may cremate the deceased person's human remains without receipt of a cremation authorization form signed by the authorizing agent if:

(1) cremation costs are paid; and

(2) the authorizing agent provides positive written identification that the human remains to be cremated are the human remains of the deceased person.

Subchapter C. Receipt And Identification Of Remains

Sec. 716.101. Unidentified Human Remains

(a) Except as provided by Subsection (b), a crematory establishment may not accept for cremation unidentified human remains.

(b) Notwithstanding any other provision of this chapter, a crematory establishment may accept for cremation unidentified human remains from a county on the order of:

(1) the county commissioners court; or

(2) a court located in the county.

Sec. 716.102. Receipt Acknowledging Acceptance Of Remains

(a) A crematory establishment shall furnish to a representative of a funeral establishment who delivers deceased human remains to the crematory establishment a receipt that includes:

(1) the signature and printed name of the representative who delivered the remains;

(2) the date and time of the delivery;

(3) the type of cremation container in which the remains were delivered;

(4) the name of the funeral establishment or other entity that contracted to provide for the cremation;

(5) the name of the individual who received the human remains on behalf of the crematory; and

(6) the name of the deceased person.

(b) The crematory establishment shall retain a copy of the receipt required by Subsection (a) in the crematory establishment's records.

Sec. 716.103. Identification Responsibility Of Crematory

(a) A crematory establishment shall place on the exterior of a cremation container a label with the deceased person's name as provided by the authorizing agent unless the crematory establishment knows the name is incorrect.

(b) A crematory establishment shall place, with the cremated remains, in the temporary container, urn, or other permanent container, a permanent metal identification disc, bracelet, or other item that can be used to identify the deceased person.

Sec. 716.104. Identification Responsibilities Of Funeral Director Or Establishment

(a) Except as provided by Section 716.054, a funeral director or funeral establishment shall provide a signed written statement to a crematory establishment that the human remains delivered to the crematory establishment were positively identified as the deceased person listed on the cremation authorization form by the authorizing agent or a representative of the authorizing agent delegated as provided by Section 716.053.

(b) An authorizing agent or the delegated representative of the agent may identify a deceased person in person or by photograph. The authorizing agent may waive the right of identification.

Subchapter F. Records

Sec. 716.251. Crematory Establishment Records

(a) A crematory establishment shall maintain a record at its place of business of each cremation. The record must contain:
  (1) the name of the deceased person;
  (2) the date of the cremation;
  (3) the final disposition of the cremated remains; and
  (4) any other document required by this chapter.

(b) A record must be kept on file at least until the fifth anniversary of the cremation.

Subchapter G. Disposition Of Remains

Sec. 716.301. Transport Of Cremated Remains

On delivery of the cremated remains by a crematory establishment, an authorizing agent or the representative delegated by the authorizing agent as provided by Section 716.053 may transport the remains without a permit in any manner in this state and finally dispose of the cremated remains in accordance with this subchapter.

Sec. 716.302. Disposition Of Cremated Remains

(a) An authorizing agent shall provide to a crematory establishment a signed written statement disclosing the final disposition of the cremated remains, if known. The crematory establishment shall retain a copy of the statement in the crematory establishment's records.

(b) The authorizing agent is responsible for disposing of cremated remains.

(c) Not earlier than the 121st day following the date of cremation, if the authorizing agent or the agent's representative has not specified the final disposition of or claimed the cremated remains, the crematory establishment or funeral establishment, if the cremated remains have been released to an employee of the funeral establishment in accordance with the authorization form, may dispose of the cremated remains in accordance with this subchapter. The crematory establishment or funeral establishment, as applicable, shall retain a record of the disposition in the establishment's records.

(d) An authorizing agent is responsible for all reasonable expenses incurred in disposing of the cremated remains under Subsection (c).

(e) A person may dispose of cremated remains only:
  (1) in a crypt, niche, grave, or scattering area of a dedicated cemetery;
  (2) by scattering the remains over uninhabited public land, sea, or other public waterways in accordance with Section 716.304; or
  (3) on private property as directed by the authorizing agent with the written consent of the property owner in accordance with Section 716.304.

Sec. 716.303. Commingling Of Remains

Unless authorized in writing by the authorizing agent, a person may not:
  (1) dispose of or scatter cremated remains in a manner or at a location that commingles the remains with other cremated remains, except by air over a scattering area or by sea; or
  (2) place the cremated remains of more than one deceased person in the same urn or other container.

Sec. 716.304. Scattering Remains

A person may scatter cremated remains over uninhabited public land, over a public waterway or sea, or on the private property of a consenting owner. Unless the container is biodegradable, the cremated remains must be removed from the container before being scattered.

Subchapter H. Penalty

Sec. 716.351. Criminal Penalty

(a) A person commits an offense if the person:

(1) cremates human remains without receipt of:

(A) a cremation authorization form signed by an authorizing agent; or

(B) written directions for the disposition by cremation of the deceased person's human remains as provided in Section 711.002(g);

(2) signs a cremation authorization form with actual knowledge that the form contains false or incorrect information; or

(3) represents to the public that the person may cremate human remains without being licensed as provided by Subchapter N, Chapter 651, Occupations Code.

(b) An offense under Subsection (a) is a Class B misdemeanor.