

INSURANCE CODE

TITLE 6. ORGANIZATION OF INSURERS AND RELATED ENTITIES

SUBTITLE E. MUTUAL AND FRATERNAL COMPANIES AND RELATED ENTITIES

CHAPTER 888. BURIAL ASSOCIATIONS

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 888.001. DEFINITIONS. In this chapter:

(1) "Burial association" means an individual, firm, partnership, association, or corporation engaged in the business of providing burial or funeral benefits payable partly or wholly in merchandise or services, not to exceed \$150 or the value thereof. The term includes a burial company and a burial society.

(2) "Insurance certificate" and "member" have the meanings assigned by Section 887.001.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.002. LIBERAL CONSTRUCTION. Sections 888.051, 888.052, 888.102(b), 888.151, 888.152, 888.153, 888.154, 888.155, 888.156, 888.157, 888.202, 888.203, and 888.204 shall be liberally construed.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.003. BYLAWS OF BURIAL ASSOCIATIONS. The bylaws of a burial association may not contain any provision in conflict with this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.004. RULES TO IMPLEMENT PURPOSES OF CHAPTER. The commissioner may adopt reasonable rules to implement the purposes of this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.005. APPLICABILITY OF TEXAS NON-PROFIT CORPORATION ACT. (a) Except to the extent of any conflict with this code, the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) applies to a burial

association. The commissioner has each power and duty of, and shall perform each act to be performed by, the secretary of state under that Act with respect to burial associations.

(b) On advance approval of the commissioner, a burial association may pay dividends to its members.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.006. APPLICABILITY OF OTHER LAW. A burial association is subject to Chapter 887.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

#### SUBCHAPTER B. ANNUAL ASSESSMENT

Sec. 888.051. IMPOSITION OF ANNUAL ASSESSMENT; AMOUNT.

(a) An annual assessment is imposed on each burial association that holds a certificate of authority to engage in the business of insurance in this state. The assessment is in addition to any other fee that the association is required to pay.

(b) The amount of the assessment is equal to the greater of:

(1) the amount computed by multiplying one-half cent by the number of members in the burial association on December 31 of the applicable year; or

(2) \$5.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.052. PAYMENT OF ANNUAL ASSESSMENT. (a) Each burial association shall pay the annual assessment imposed by Section 888.051 to the department between January 1 and March 1 at the same time the association files its annual statement with the department.

(b) Annual assessments collected under this section shall be deposited to the credit of the Texas Department of Insurance operating account. Sections 201.001 and 201.002 apply to the assessments.

(c) All assessments paid to the department under this section are for the use and benefit of the department to:

(1) obtain advice, information, and knowledge

relating to adequate and reasonable rates for burial associations in this state;

(2) compile records for purposes of Subdivision (1); and

(3) implement Sections 888.051, 888.052, 888.102(b), 888.151, 888.152, 888.153, 888.154, 888.155, 888.156, 888.157, 888.202, 888.203, and 888.204.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Amended by:

Acts 2007, 80th Leg., R.S., Ch. 730 (H.B. 2636), Sec. 2E.105, eff. April 1, 2009.

#### SUBCHAPTER C. INSURANCE CERTIFICATES; PAYMENT OF BENEFITS

Sec. 888.101. INSURANCE CERTIFICATES ISSUED BY BURIAL ASSOCIATION. (a) Except as provided by Subsection (c), an insurance certificate issued by a burial association must provide for the payment of the benefit in specified merchandise or burial services.

(b) The merchandise or services to be provided must be:

(1) stated in the insurance certificate; and  
(2) approved by the department as being of the reasonable value stated on the face of the certificate.

(c) Subsections (a) and (b) do not apply if, at the time the insurance certificate is issued, the insured elects to have the benefit paid in cash.

(d) An election under this section must be stated in the insurance certificate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

#### Sec. 888.102. PAYMENT INSTEAD OF MERCHANDISE OR SERVICES.

(a) If a burial association that issues an insurance certificate fails or refuses to provide the merchandise or services specified by the certificate, the association shall pay the benefit in cash.

(b) If a burial association that issues an insurance certificate is not given the opportunity to provide the merchandise or services specified by the certificate, instead of the specified

merchandise or services, the association shall pay the greater of:

- (1) the total amount paid into its mortuary fund to the credit of that certificate's account; or
- (2) the percentage of the certificate's face value specified by the certificate.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.103. INSURANCE CERTIFICATE FORMS. An insurance certificate form used by a burial association on or after May 12, 1939, must comply with this chapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

#### SUBCHAPTER D. RATES FOR BURIAL ASSOCIATIONS

Sec. 888.151. DATA COLLECTION RELATED TO RATES. (a) The commissioner shall:

- (1) collect data, statistics, and information on the death rates, lapses, experiences, and other information relating to burial association rates in and outside of this state that the commissioner considers useful in determining reasonable and adequate rates for burial associations; and
- (2) study the statistics, rates, and experiences of burial associations.

(b) The commissioner may distribute information collected under Subsection (a)(1) to burial associations in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.152. ADOPTION OF RATE SCHEDULE. (a) The commissioner shall adopt a schedule of reasonable and adequate rates that a burial association may charge its members. The schedule of rates must be adopted in compliance with Chapter 2001, Government Code.

(b) The schedule must show the maximum and minimum rates that a burial association may charge per week, per month, per quarter, per six months, and per year, for the definite benefits at the definite ages. The commissioner must designate the ages in convenient groups.

(c) To ensure the adequacy and reasonableness of the rates, the commissioner may consider information gathered from an area of this state that is sufficiently large to include the varying conditions of the risks involved and during a period sufficiently long to ensure that the minimum and maximum rates authorized are:

(1) just and reasonable as they apply to members of the public who become insured under this chapter; and

(2) adequate and non-confiscatory as they apply to the burial associations.

(d) The commissioner may require:

(1) sworn statements from any burial association in this state showing its experience in rates collected and claims paid over a reasonable period; and

(2) any other information the commissioner considers necessary or useful in adopting the rate schedule.

(e) The department shall mail a copy of the adopted rate schedule to each burial association that holds a certificate of authority to engage in the business of insurance in this state.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.153. NEW OR AMENDED RATE SCHEDULES. (a) At any time the commissioner considers appropriate, the commissioner may adopt:

(1) a new rate schedule for burial associations; or

(2) an amendment to an existing rate schedule.

(b) After the commissioner adopts a new rate schedule or an amendment to an existing rate schedule and sends a copy to the burial associations, each burial association shall use the new or amended rate schedule for individuals who the association subsequently accepts as members.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.154. CONTRACTS WITH EXPERTS AND CONSULTANTS. The department may contract with experts and consultants to assist the department in exercising the department's powers and performing the department's duties under this subchapter.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.155. RETENTION OF BURIAL ASSOCIATION'S INITIAL RATE SCHEDULE. Each burial association shall retain, as part of its permanent records, the initial rate schedule adopted by the association under former Article 14.45, Insurance Code, following the amendment of that article by Chapter 593, Acts of the 66th Legislature, Regular Session, 1979.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.156. CHANGE OF RATES BY BURIAL ASSOCIATION. (a) With the department's consent, a burial association may change its rates by adopting a new rate schedule and filing that schedule with the department.

(b) The new rate schedule must be similar in all respects to the initial schedule adopted by the burial association and each new rate must be not less than the minimum or more than the maximum rate adopted by the commissioner.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.157. CONTINUATION OF FORMER RATES. (a) A burial association that had rates adopted and in use before June 12, 1947, may continue to apply those rates to individuals who were members of the burial association on that date.

(b) With the department's approval, the burial association may:

- (1) change the rates described by Subsection (a); and
- (2) make the new rates correspond to the rate schedule most recently filed by the burial association with the department.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.158. FAILURE TO COMPLY WITH COMMISSIONER RATE ORDERS. If a burial association refuses to comply with an order of the commissioner regarding rates under this subchapter, the commissioner shall consider the association insolvent.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

#### SUBCHAPTER E. PROHIBITIONS

Sec. 888.201. UNAUTHORIZED PROVIDING OF BURIAL OR FUNERAL BENEFITS. An individual, firm, partnership, corporation, or association may not engage in the business of providing burial or funeral benefits payable partly or wholly in merchandise or services unless the individual, firm, partnership, corporation, or association is authorized to engage in that business by this chapter, Chapter 886, Chapter 887, or another law.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.202. RATE VIOLATIONS. (a) A burial association or an officer, agent, or employee of a burial association may not charge or collect any rate from a member of the association other than the rate applicable for the age and benefit stated in the association's rate schedule on file with the department and in force at that time.

(b) An officer, agent, or employee of a burial association commits an offense if the officer, agent, or employee violates Subsection (a).

(c) An officer of a burial association commits an offense if the officer knowingly permits a violation of Subsection (a).

(d) An offense under this section is a misdemeanor punishable by a fine of not less than \$50 or more than \$200.

(e) The department may revoke the certificate of authority of a burial association that violates this section.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.203. CONNECTION BETWEEN BURIAL ASSOCIATIONS. (a) A burial association may not be directly or indirectly connected with another burial association.

(b) A member, director, or officer of a burial association may not be a member, director, or officer of another burial association.

(c) A person whose spouse or employee is an officer or director of a burial association may not be an officer or director of another burial association.

(d) A funeral director or funeral home directly or

indirectly connected with a burial association or designated by a burial association as its funeral director or funeral home may not be:

(1) connected in any manner with another burial association; or

(2) designated by another burial association as its funeral director or funeral home to:

(A) provide its members with services or merchandise; or

(B) service its policies.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.204. CERTAIN AFFILIATIONS BETWEEN BURIAL ASSOCIATIONS AND FUNERAL HOMES PROHIBITED. (a) It is against the public policy of this state for a funeral home or an owner of an interest in a funeral home to be directly or indirectly connected or affiliated with more than one burial association.

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

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.

Sec. 888.205. VIOLATION OF CHAPTER; CRIMINAL PENALTY. (a) A director, officer, agent, employee, attorney at law, or attorney in fact of a burial association, or other person commits an offense if the person violates a provision of this chapter other than Section 888.202.

(b) An offense under this section is a misdemeanor punishable by:

(1) a fine not to exceed \$500;

(2) confinement in jail for a term not to exceed six months; or

(3) both the fine and confinement.

Added by Acts 2001, 77th Leg., ch. 1419, Sec. 1, eff. June 1, 2003.