

By: Jones of Dallas, Davis of Dallas

H.B. No. 1077

A BILL TO BE ENTITLED

AN ACT

relating to removal of remains interred in a cemetery.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 711.004, Health and Safety Code, is amended by amending Subsections (a), (d), and (e) and adding Subsections (j), (k), and (l) to read as follows:

(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.

(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

1 remains from a plot, the court shall hear an application for
2 permission to remove remains under Subsection (c) not later than
3 the first business day after the application is made. In an
4 emergency circumstance described by this subsection, personal
5 notice may be given on the date the application is made.

6 (e) Subsections (a)-(d) and (k) do not apply to the removal
7 of remains:

8 (1) from one plot to another plot in the same cemetery,
9 if the cemetery:

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

12 (B) is owned or operated by an unincorporated
13 association of plot owners not operated for profit;

14 (C) is owned or operated by a church, a religious
15 society or denomination, or an entity solely administering the
16 temporalities of a church or religious society or denomination; or

17 (D) is a public cemetery owned by this state, a
18 county, or a municipality;

19 (2) by the cemetery organization from a plot for which
20 the purchase price is past due and unpaid, to another suitable
21 place; ~~or~~

22 (3) on the order of a court or person who conducts
23 inquests; or

24 (4) from a plot in a cemetery owned and operated by the
25 Veterans' Land Board.

26 (j) A cemetery organization may remove remains from a plot
27 in the cemetery and transfer the remains to another plot in the same

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

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

27 (l) For purposes of Subsections (d) and (k), "emergency

1 circumstance" means:

2 (1) a natural disaster; or

3 (2) an error in the interment of remains.

4 SECTION 2. This Act takes effect September 1, 2003, and
5 applies only to removal of remains from a cemetery on or after that
6 date. Removal of remains from a cemetery before the effective date
7 of this Act is governed by the law as it existed immediately before
8 the effective date of this Act, and that law is continued in effect
9 for that purpose.