

BILL ANALYSIS

C.S.H.B. 2581
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Financial Institutions
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Currently, a cemetery or its agent may sell "crypts" (for interment of human remains) and "niches" (for interment of cremated remains) to Texas citizens in a "to be built" mausoleum and use the funds generated for current operations. Although the cemetery promises to build the mausoleum when total sales reach a level that justifies construction, Texas law does not require the seller to be bonded or require any portion of the sales proceeds to be placed in escrow or trust. Approximately half of the States currently have statutes that govern this activity, including two States that flatly prohibit the sale of undeveloped mausoleum spaces. Recently, problems have arisen in Texas regarding this activity and emphasize the need for further regulation.

The purpose of the bill is to create and apply appropriate financial discipline to the process of pre-construction mausoleum sales by perpetual care cemeteries.

C.S.H.B. 2581 requires a perpetual care cemetery to ensure construction of a proposed mausoleum before starting a sales effort, either by establishing a preconstruction trust to hold a portion of sales proceeds for reserve funding of construction, or by submitting a performance bond to the banking commissioner.

RULEMAKING AUTHORITY

It is the committee's opinion that this bill does not expressly grant any additional rulemaking authority to a state officer, department, agency, or institution.

ANALYSIS

C.S.H.B. 2581 amends Section 712, Health and Safety Code, as follows:

The substitute defines the terms "preconstruction trust," "preconstruction trustee," and "undeveloped mausoleum space."

The substitute provides that records relating to sales of undeveloped mausoleum spaces, mausoleum construction contracts and specifications, and any preconstruction trust are subject to examination by the banking commissioner. Clarifies that examination fees must be set in an amount sufficient to defray the cost of examination, the equitable or proportionate cost of maintenance and operation of the Department of Banking, and the cost of administering and enforcing Chapter 712, Health & Safety Code.

The substitute provides that the commissioner may order restitution by a corporation for failing to make a deposit in a fund or preconstruction trust.

The substitute requires a perpetual care cemetery, before starting a sales effort, to ensure construction of the proposed mausoleum, by either establishing a preconstruction trust in which 40% of sales proceeds will be deposited for reserve funding of construction, or submitting a performance bond to the commissioner, the amount to be equal to 120 percent of the prudently documented cost of construction. Provides that a perpetual care cemetery may switch from use of a preconstruction trust to a performance bond by complying with requirements.

The substitute provides parameters for establishing a preconstruction trust if the perpetual care cemetery does not elect to submit a performance bond. Requires the cemetery to deposit at least 40 percent of all proceeds received directly or indirectly for the sale of undeveloped mausoleum spaces, not including interest, finance charges, sales taxes, credit life insurance premiums, or required deposits to the perpetual care trust fund. Permits the commissioner to authorize a smaller percentage for deposit if the perpetual care cemetery demonstrates that the amount of funds projected to be deposited in the preconstruction trust under the proposed smaller percentage will equal or exceed 120 percent of the cost of constructing the mausoleum. Provides standards for timely deposits to and reasonable operation of the preconstruction trust. Limits investment of trust funds to cash, cash-equivalents, and marketable short-term government securities, and specifies permissible use of the income.

The substitute requires a perpetual care cemetery to begin construction of the proposed mausoleum before 48 months have expired from the date of first sale and complete construction before 60 months have expired from the date of first sale, except that the commissioner can grant extensions of time for good cause. If the cemetery fails to begin or complete construction within these time limits, consumers would be entitled to a full refund of the amount paid for the undeveloped mausoleum space plus income earned on deposits in the preconstruction trust.

The substitute provides that the perpetual care cemetery is entitled to withdraw all funds in the preconstruction trust upon completion of construction of the mausoleum the funds were reserved for. Permits the cemetery to periodically make construction draws during construction of the mausoleum based on previously unreimbursed construction costs. Provides for withdrawing funds for specific events, such as satisfying a customer by supplying another interment space.

The substitute requires a sales contract to be written in plain language designed to be easily understood by the average consumer, and printed in an easily readable font and type size. Requires the contract to contain specified disclosures.

The substitute provides that a perpetual care cemetery may secure its obligation to build the mausoleum by submitting a performance bond to the commissioner in lieu of establishing a preconstruction trust, if the bond is conditioned on the faithful performance of the contracts for sale of undeveloped mausoleum spaces. Requires the amount of the bond to equal or exceed 120 percent of the cost of construction of the mausoleum based on specified documentation, especially if the corporation intends to construct the mausoleum itself. Provides that a perpetual care cemetery may switch from a performance bond to use of a preconstruction trust by complying with requirements.

The substitute specifies the periodic reports required to be submitted to the commissioner and the time the reports are due.

The substitute provides that the Act applies to contracts executed on or after the effective date, except that prior law governs new contracts on an existing mausoleum project if at least 20 percent of the undeveloped mausoleum spaces were sold before the effective date of the Act. Authorizes the commissioner to exempt future sales in an existing mausoleum project that doesn't meet the 20 percent test if the commissioner determines that application of the Act to the subject mausoleum project would be capricious, arbitrary or unfair in light of the degree to which the perpetual care cemetery demonstrates its detrimental reliance on prior law.

EFFECTIVE DATE

September 1, 2005

COMPARISON OF ORIGINAL TO SUBSTITUTE

C.S.H.B. 2581 modifies the original by adding language that specifies the cost of mausoleum construction if the corporation intends to construct the mausoleum itself.

C.S.H.B. 2581 79(R)