

1-1 By: Solomons (Senate Sponsor - Armbrister) H.B. No. 2581
1-2 (In the Senate - Received from the House May 2, 2005;
1-3 May 6, 2005, read first time and referred to Committee on Business
1-4 and Commerce; May 18, 2005, reported favorably by the following
1-5 vote: Yeas 5, Nays 0; May 18, 2005, sent to printer.)

1-6 A BILL TO BE ENTITLED
1-7 AN ACT

1-8 relating to the regulation of a perpetual care cemetery and the sale
1-9 of interment rights in a mausoleum before completion of
1-10 construction.

1-11 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-12 SECTION 1. Section 712.001(b), Health and Safety Code, is
1-13 amended by amending Subdivision (1) and adding Subdivisions (4-a),
1-14 (4-b), and (6) to read as follows:

1-15 (1) "Banking department" or "department" means the
1-16 Banking Department of Texas.

1-17 (4-a) "Preconstruction trust" means a trust
1-18 established by a corporation under this chapter for the purpose of
1-19 administering proceeds from sales of undeveloped mausoleum spaces.

1-20 (4-b) "Preconstruction trustee" means the trustee of a
1-21 preconstruction trust.

1-22 (6) "Undeveloped mausoleum space" means a crypt or
1-23 niche in a mausoleum or mausoleum section that is designed to
1-24 contain at least 10 crypt or niche interments and that is not ready
1-25 for the interment of human remains or cremated remains on the date
1-26 an interment right pertaining to the mausoleum space is sold. The
1-27 term does not include a private mausoleum or mausoleum section in
1-28 which all mausoleum spaces are intended to be sold under a single
1-29 contract.

1-30 SECTION 2. Section 712.044, Health and Safety Code, is
1-31 amended to read as follows:

1-32 Sec. 712.044. EXAMINATION OF RECORDS; EXAMINATION FEES AND
1-33 EXPENSES. (a) The commissioner may examine, annually or more
1-34 often as the commissioner reasonably considers necessary or
1-35 appropriate to protect the interest of plot owners and efficiently
1-36 administer and enforce this chapter:

1-37 (1) the books and records of a corporation relating to
1-38 its fund, including deposits to or withdrawals from the fund,
1-39 income of the fund, and uses and expenditures of that income;

1-40 (2) the books and records of a corporation relating to
1-41 sales of undeveloped mausoleum spaces and any preconstruction trust
1-42 established by the corporation as provided by Section 712.063,
1-43 including deposits to or withdrawals from the preconstruction
1-44 trust, income of the preconstruction trust, and uses and
1-45 expenditures of principal and income of the preconstruction trust;
1-46 and

1-47 (3) the [, annually or more often as necessary to
1-48 protect the interest of plot owners. In addition, the commissioner
1-49 may examine] consumer complaint files of a corporation relating to
1-50 the fund, sales of undeveloped mausoleum spaces, a preconstruction
1-51 trust, or to discharge of the corporation's perpetual care
1-52 responsibilities, minutes of the corporation's board of directors,
1-53 cemetery dedication statements and plat maps, and mausoleum and
1-54 lawn crypt construction contracts and specifications.

1-55 (b) A corporation that is examined under this section shall
1-56 make the specified books and records available for examination by
1-57 the banking department upon reasonable notice to the corporation
1-58 and shall pay to the commissioner for the examination a reasonable
1-59 and necessary fee set by rules adopted by the Finance Commission of
1-60 Texas under Section 712.008 to defray:

1-61 (1) the cost of examination;

1-62 (2) the equitable or proportionate cost of maintenance
1-63 and operation of the department; and

1-64 (3) the cost of administering and enforcing this

2-1 chapter.

2-2 SECTION 3. Section 712.0441(f), Health and Safety Code, is
2-3 amended to read as follows:

2-4 (f) The commissioner may issue an order requiring
2-5 restitution by a corporation to its fund or to a preconstruction
2-6 trust if, after notice and opportunity for hearing held in
2-7 accordance with the procedures for a contested case hearing under
2-8 the Administrative Procedure and Texas Register Act, the
2-9 commissioner finds that the corporation has not made a deposit in
2-10 the fund as required by Section 712.028 or in the preconstruction
2-11 trust as required by Section 712.063.

2-12 SECTION 4. Chapter 712, Health and Safety Code, is amended
2-13 by adding Subchapter D to read as follows:

2-14 SUBCHAPTER D. SALE OF UNDEVELOPED MAUSOLEUM SPACE

2-15 Sec. 712.061. OFFER AND SALE OF UNDEVELOPED MAUSOLEUM
2-16 SPACE. (a) A corporation may not directly or indirectly sell or
2-17 offer for sale an undeveloped mausoleum space unless before the
2-18 sale or offer the corporation:

2-19 (1) establishes a preconstruction trust as provided by
2-20 Section 712.063 or executes and submits a performance bond payable
2-21 to the commissioner as provided by Section 712.067; and

2-22 (2) submits a written notice to the commissioner as
2-23 required by Subsection (b).

2-24 (b) The written notice to the commissioner must set forth:

2-25 (1) the date the corporation anticipates that sales of
2-26 undeveloped mausoleum spaces will begin;

2-27 (2) a copy of the sales contract proposed for use that
2-28 complies with Section 712.066;

2-29 (3) if the corporation establishes a preconstruction
2-30 trust as provided by Section 712.063, a copy of the executed
2-31 preconstruction trust agreement that complies with this subchapter
2-32 and identifies the preconstruction trustee;

2-33 (4) if the corporation submits a performance bond
2-34 payable to the commissioner as provided by Section 712.067, the
2-35 executed, original performance bond in the amount required by
2-36 Section 712.067 and documentation supporting the corporation's
2-37 computation of that amount; and

2-38 (5) other information the commissioner reasonably
2-39 requires to properly administer and enforce this subchapter.

2-40 (c) At any time before beginning construction of the
2-41 mausoleum or mausoleum section in which undeveloped mausoleum
2-42 spaces are being sold, a corporation that has established a
2-43 preconstruction trust may substitute a performance bond that meets
2-44 the requirements of Section 712.067. On acceptance of the
2-45 performance bond by the commissioner, the corporation may terminate
2-46 and withdraw all proceeds deposited in the preconstruction trust.

2-47 Sec. 712.062. DEPOSITS TO FUND. This subchapter does not
2-48 affect the corporation's obligation to make deposits to its fund as
2-49 provided in Subchapter B.

2-50 Sec. 712.063. PRECONSTRUCTION TRUST. (a) Except as
2-51 provided by Section 712.067, a corporation that intends to directly
2-52 or indirectly sell or offer for sale undeveloped mausoleum spaces
2-53 shall establish a preconstruction trust by written declaration and
2-54 agreement appointing as preconstruction trustee a financial
2-55 institution with trust powers that is located in this state.

2-56 (b) The corporation shall deposit in the preconstruction
2-57 trust an amount equal to at least 40 percent of all proceeds
2-58 received directly or indirectly from the sale of undeveloped
2-59 mausoleum spaces, not including interest, finance charges, sales
2-60 taxes, credit life insurance premiums, or deposits to the
2-61 corporation's fund required by Section 712.029(c).

2-62 (c) On application, the commissioner may authorize a
2-63 corporation to deposit less than the amount required by Subsection
2-64 (b) if the corporation demonstrates to the reasonable satisfaction
2-65 of the commissioner that:

2-66 (1) the sales projections of the corporation are
2-67 prudent and based on reasonable assumptions;

2-68 (2) the projected cost of construction is objectively
2-69 determined based on documentation similar to that required by

3-1 Section 712.067(b); and

3-2 (3) the amount of money projected to be deposited in
 3-3 the preconstruction trust under the proposed lesser amount will
 3-4 equal or exceed 120 percent of the cost of constructing the
 3-5 mausoleum or mausoleum section.

3-6 (d) The corporation shall deposit the required amount into
 3-7 the preconstruction trust on or before the 30th day after the end of
 3-8 the month in which payment is received. At the time of making a
 3-9 deposit, the corporation shall furnish to the preconstruction
 3-10 trustee the name of each payor and the amount of payment on each
 3-11 account for which the deposit is being made. A contract between the
 3-12 corporation and an agent or third party developer may not restrict
 3-13 or waive the corporation's primary liability for making the
 3-14 deposits required by this section.

3-15 (e) The preconstruction trustee may commingle deposits
 3-16 received if the accounting records accurately establish a separate
 3-17 account for each contract and reflect the amounts deposited and the
 3-18 income and loss allocable to each contract.

3-19 (f) Money in a preconstruction trust may be invested only
 3-20 in:

3-21 (1) demand deposits, savings accounts, certificates
 3-22 of deposit, or other accounts in financial institutions if the
 3-23 amounts deposited in those accounts are fully covered by federal
 3-24 deposit insurance or otherwise fully secured by a separate fund of
 3-25 securities in the manner provided by Section 184.301, Finance Code;

3-26 (2) marketable notes, bonds, evidences of
 3-27 indebtedness, or obligations with a term to maturity of five years
 3-28 or less and:

3-29 (A) issued by the United States or an
 3-30 instrumentality of the United States; or

3-31 (B) the principal and interest of which are
 3-32 guaranteed by the full faith and credit of the United States; and

3-33 (3) a mutual fund the portfolio of which consists
 3-34 wholly of investments permitted by Subdivisions (1) and (2).

3-35 (g) The preconstruction trustee may withdraw money from
 3-36 earnings on a preconstruction trust for the purpose of paying
 3-37 reasonable and necessary costs of operation of the preconstruction
 3-38 trust, including trustee or depository fees and expenses, and any
 3-39 special examination fees due to the department related to an
 3-40 examination of the preconstruction trust that is not incidental to
 3-41 examination of the corporation's fund. With the department's prior
 3-42 approval, the corporation may withdraw money from earnings on a
 3-43 preconstruction trust to pay any tax incurred because of the
 3-44 existence of the preconstruction trust.

3-45 (h) The preconstruction trust and the preconstruction
 3-46 trustee are governed by Subtitle B, Title 9, Property Code.

3-47 Sec. 712.064. CONSTRUCTION; DEFAULT. (a) The corporation
 3-48 shall start construction of the mausoleum or mausoleum section in
 3-49 which sales or reservations for sale of undeveloped mausoleum
 3-50 spaces are being made on or before a date that is 48 months after the
 3-51 date of the first of those sales or reservations and shall complete
 3-52 construction on or before a date that is 60 months after the date of
 3-53 the first of those sales or reservations. The commissioner may
 3-54 grant extensions for good cause shown.

3-55 (b) If construction of a mausoleum or mausoleum section
 3-56 related to an undeveloped mausoleum space has not begun or been
 3-57 completely constructed by the applicable time specified by
 3-58 Subsection (a), on the written request of the buyer, the
 3-59 corporation and the preconstruction trustee shall, on or before the
 3-60 30th day after the date of the buyer's request, refund the entire
 3-61 amount paid for the undeveloped mausoleum space plus, if the
 3-62 corporation established a preconstruction trust, net income earned
 3-63 on that portion of the money deposited in the preconstruction
 3-64 trust. The corporation is liable to a buyer for any portion of the
 3-65 purchase price paid for undeveloped mausoleum spaces that was not
 3-66 deposited in the preconstruction trust.

3-67 Sec. 712.065. RELEASE OF TRUST FUNDS TO CORPORATION.

3-68 (a) On completion of construction of a mausoleum or mausoleum
 3-69 section subject to this subchapter, the corporation may withdraw

4-1 all money deposited in the preconstruction trust and the net income
 4-2 earned on the money after submitting to the preconstruction trustee
 4-3 a sworn affidavit of completion executed by an officer or agent of
 4-4 the corporation on a form prescribed by the department.

4-5 (b) During construction of the mausoleum or mausoleum
 4-6 section containing the undeveloped mausoleum spaces, the
 4-7 corporation may periodically withdraw from the preconstruction
 4-8 trust an amount equal to the previously unreimbursed cost of
 4-9 performed labor or delivered materials after submitting to the
 4-10 preconstruction trustee a sworn affidavit of expenditures for
 4-11 construction cost executed by an officer or agent of the
 4-12 corporation on a form prescribed by the department.

4-13 (c) If the corporation delivers a completed mausoleum space
 4-14 acceptable to the buyer in lieu of the undeveloped mausoleum space
 4-15 purchased, the corporation may withdraw all money deposited to the
 4-16 preconstruction trust for that buyer and related income earned on
 4-17 the money after submitting to the preconstruction trustee a sworn
 4-18 affidavit of performance executed by an officer or agent of the
 4-19 corporation on a form prescribed by the department.

4-20 (d) The corporation shall maintain copies of the affidavits
 4-21 required by this section for examination by the department.

4-22 Sec. 712.066. CONTRACT DISCLOSURES. (a) A sales contract
 4-23 for an undeveloped mausoleum space, whether in English or Spanish,
 4-24 must inform the buyer:

4-25 (1) that the buyer by written notice may cancel the
 4-26 contract for the failure of the corporation or its agent or
 4-27 contractor to construct the mausoleum or mausoleum section
 4-28 containing the undeveloped mausoleum space within the time limits
 4-29 specified by Section 712.064(a) and receive a refund of the entire
 4-30 amount paid under the contract for the undeveloped mausoleum space
 4-31 plus, if the corporation established a preconstruction trust, net
 4-32 income earned on that portion of the money deposited in the
 4-33 preconstruction trust, as provided by Section 712.064(b);

4-34 (2) of the options available under a fully paid
 4-35 contract in the event that the person to be interred in the
 4-36 undeveloped mausoleum space dies before completion of the related
 4-37 mausoleum or mausoleum section, which may include an option to:

4-38 (A) select a replacement mausoleum space or other
 4-39 interment that is acceptable to the buyer or buyer's
 4-40 representative; or

4-41 (B) elect temporary interment of the human
 4-42 remains or cremated remains in an existing mausoleum space until
 4-43 the undeveloped mausoleum space is completed, at which time the
 4-44 corporation shall disinter and reinter the human remains or
 4-45 cremated remains at no additional charge; and

4-46 (3) if the corporation does not offer a temporary
 4-47 interment option and the buyer does not accept a replacement
 4-48 mausoleum space or other interment, that the buyer or the buyer's
 4-49 representative by written notice may cancel the contract and
 4-50 receive a refund of the entire amount paid under the contract for
 4-51 the undeveloped mausoleum space plus, if the corporation
 4-52 established a preconstruction trust, net income earned on that
 4-53 portion of the money deposited in the preconstruction trust, as
 4-54 provided by Section 712.064(b).

4-55 (b) A corporation's sales contract for undeveloped
 4-56 mausoleum space must comply with applicable regulations of the
 4-57 Federal Trade Commission, including 16 C.F.R. Section 433.2, with
 4-58 respect to a contract payable in installments.

4-59 (c) Required notices to buyers must be written in plain
 4-60 language designed to be easily understood by the average consumer
 4-61 and be printed in an easily readable font and type size.

4-62 Sec. 712.067. BOND IN LIEU OF PRECONSTRUCTION TRUST.
 4-63 (a) In lieu of establishing the preconstruction trust required by
 4-64 Section 712.063, a corporation may execute and submit a bond issued
 4-65 by a surety company authorized to do business in this state and
 4-66 reasonably acceptable to the commissioner. The bond must be
 4-67 payable to the commissioner and conditioned on the faithful
 4-68 performance of the contracts for sale of undeveloped mausoleum
 4-69 spaces.

