

BILL ANALYSIS

C.S.H.B. 2369
By: Flynn
Public Health
Committee Report (Substituted)

BACKGROUND AND PURPOSE

When a person purchases a cemetery plot, the purchaser obtains the right to burial in that plot. Once the right is obtained, the purchaser may sell or grant the right of burial to an heir. As Americans have become more mobile, the sale of burial rights has increased, and third parties have developed businesses to help families through the interment rights sales process. Most cemeteries are familiar with third-party sellers in their area and most sellers operate within a certain geographic region.

Recently, however, the number of online third-party sellers has increased, with websites advertising the sale of interment rights across multiple states. As the practice has become less regional, cemeteries have reported an increase in sales that are not documented with the cemetery. The certificate of ownership to a burial right is not final until the cemetery receives the required documentation. As a result, the purchasers are often unaware of any problem with the purchase until the time of interment.

C.S.H.B. 2369 requires third-party sellers, or brokers, to register to sell or resell a cemetery plot and sets out procedures for the regulation of documentation filed by brokers with a cemetery in order to complete a sale. The bill does not affect a person or heir selling the person's own burial right, nor does it affect a seller who owns and operates the cemetery where the plot is located.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTION 2 of this bill.

ANALYSIS

C.S.H.B. 2369 amends the Health and Safety Code, effective January 1, 2010, to create a cemetery broker registration. The bill prohibits a person from acting as a cemetery broker in the sale of the exclusive right of sepulture in a plot unless the person is registered with the Texas Department of Banking as a cemetery broker or is exempt from such registration as provided. The bill requires a cemetery broker to register with the department and to file a sworn, notarized statement containing the prescribed contact information. The bill specifies that such a registration is valid until withdrawn or revoked, and that periodic renewal of the registration is not required. The bill requires a registered cemetery broker to update the information contained in the registration statement not later than 60 days after the date the information changes. The bill authorizes the department to charge a cemetery broker a reasonable fee, not to exceed \$100 per year, to cover the costs of filing and maintaining the registration statement and administering the bill's provisions.

C.S.H.B. 2369, effective January 1, 2010, prescribes the conditions under which the registration requirement is inapplicable to a person offering to sell or selling the exclusive right of sepulture in a plot. The bill, effective September 1, 2010, requires the department to prepare a brochure with information of public interest explaining matters relating to the resale of plots by a

cemetery broker, including disclosure that the sale is not complete until registered with the cemetery organization; and describing the department's procedures for filing and resolving a complaint. The bill, effective September 1, 2010, requires the department to provide each registered cemetery broker with the number of brochures the department considers appropriate for a fee to recover the department's costs and make the brochure available to the public and appropriate state agencies, and requires a cemetery broker to provide the brochure on the initial inquiry by a plot owner or the representative of a plot owner regarding the potential resale of the exclusive right of sepulture in the plot.

C.S.H.B. 2369 specifies that a cemetery broker is subject to rules adopted by the Finance Commission of Texas regarding the manner in which the cemetery broker provides consumers with information on how to file complaints with the department. The bill requires such rules to be consistent with the obligations imposed by the bill's provisions. The bill requires the department, if the department receives a signed written complaint from a person concerning a cemetery broker, to notify the cemetery broker's designated representative in writing of the complaint not later than the 31st day after the date the complaint was received and provide a copy of the complaint to the representative. The bill authorizes the department to require the cemetery broker to resolve the complaint or to provide the department with a response to the complaint, or direct the cemetery broker in writing to take specific action to resolve the complaint.

C.S.H.B. 2369 authorizes a cemetery broker to withdraw the cemetery broker's registration at any time. The bill prescribes the conditions under which the banking commissioner, after notice and hearing, is authorized to revoke the registration of a registered cemetery broker. The bill requires the banking commissioner to state the basis of the decision in an order revoking the registration of a cemetery broker and authorizes the cemetery broker to appeal an order revoking registration in the manner provided by the Administrative Procedure Act.

C.S.H.B. 2369 prohibits a person from acting as a cemetery broker in the resale of the exclusive right of sepulture in a plot unless the person is a registered cemetery broker or is exempt from registration under the bill's provisions. The bill specifies that the resale of the exclusive right of sepulture is subject to the rules of the cemetery organization and any restrictions in the certificate of ownership, quitclaim agreement, or other instrument of conveyance. The bill requires a quitclaim agreement or other instrument evidencing the conveyance of the exclusive right of sepulture to be in a form authorized by or otherwise acceptable to the cemetery organization; signed by the grantee named in the certificate of ownership or other instrument of conveyance as filed and recorded in the cemetery organization's office as the seller or transferor, the designated purchaser or transferee, and each cemetery broker or other agent assisting in the transfer of the interment rights; and filed and recorded with the cemetery organization not later than the third business day after the date of the sale. The bill requires a cemetery organization, on request of a person acting as a cemetery broker, to provide its rules, conveyance forms, and written guidelines and procedures for brokered sales, if any.

C.S.H.B. 2369 prohibits the sale of the exclusive right of sepulture in a group of interment rights that were conveyed collectively from being divided without the consent of the cemetery organization. The bill requires a person acting as a cemetery broker that sells the right of sepulture in a plot to collect and remit to the cemetery organization all fees required in the sale of a plot, and any other fee required by the rules of the cemetery organization. The bill prohibits a fee required by a rule of the cemetery organization for the sale of the right of sepulture in a plot from exceeding the fees charged on such a sale. The bill requires a person acting as a cemetery broker to keep a record of each sale and prescribes the information required to be included in the record.

C.S.H.B. 2369 requires the Texas Department of Banking to provide model quitclaim agreements or other instruments of conveyance for use in transferring the exclusive right of sepulture by a cemetery organization, and authorizes a cemetery organization to modify the

model forms to include additional provisions considered necessary to conform to the practices and policies of the organization in which the plot is located. The bill specifies that a person who is an officer, agent, or employee of the cemetery organization or its affiliate is not required to be licensed to sell a plot in a dedicated cemetery.

C.S.H.B. 2369 makes it a Class A misdemeanor offense for 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 to offer or receive monetary inducement to solicit business for a cemetery broker, fail or refuse to keep records of resales or to collect and remit fees relating to the sale of a plot by a cemetery broker, or fail or refuse to register as a cemetery broker as required by the bill's provisions.

C.S.H.B. 2369 expands the rulemaking authority of the Finance Commission of Texas to include enforcement and administration of provisions relating to the sale of plots by a person who is not an officer, agent, or employee of a cemetery organization and the registration of cemetery brokers with the Texas Department of Banking. The bill defines "cemetery broker" to mean a person who sells the exclusive right of sepulture for another person, excluding a person who is an officer, agent, or employee of a cemetery organization in which the plot is located or who originally purchased the exclusive right of sepulture for personal use. The bill defines "commission," "commissioner," and "department."

C.S.H.B. 2369 makes its provisions relating to the requirement that the Texas Department of Banking provide model quitclaim agreements or other instruments of conveyance effective September 1, 2010. The bill makes requirements relating to the preparation and provision of a brochure of information on the resale of plots effective September 1, 2010. The bill makes provisions requiring a person to register as a cemetery broker, providing exemptions to that requirement, and requiring a cemetery broker to conform to certain rules regarding the manner in which the broker provides consumers with complaint procedures information effective January 1, 2010.

EFFECTIVE DATE

Except as otherwise provided, on passage, or, if the act does not receive the necessary vote, the act takes effect September 1, 2009.

COMPARISON OF ORIGINAL AND SUBSTITUTE

C.S.H.B. 2369 adds a provision not included in the original granting the Finance Commission of Texas rulemaking authority relating to the registration of cemetery brokers. The substitute adds provisions not included in the original requiring the Texas Department of Banking to provide certain model agreements and other instruments of conveyance for use in transferring exclusive right of sepulture and authorizing a cemetery organization to modify such models as necessary. The substitute adds provisions not included in the original creating a cemetery broker registration with the Texas Department of Banking for the sale or resale of cemetery plots, whereas the original requires a person to register with the Finance Commission of Texas. The substitute adds provisions not included in the original relating to public information, complaints, and termination of a registration and makes related conforming changes. The substitute omits provisions included in the original setting out circumstances under which a person who is not an officer, agent, or employee of the cemetery organization is authorized to act as a cemetery broker relating to the filing or recording of an acceptable quitclaim agreement or other instrument of conveyance with a cemetery organization, payment of fees related to the transfer, and payment of the full purchase price of the exclusive right to sepulture in the plot. The substitute differs from the original by specifying that the resale of the exclusive right of sepulture in a plot is subject to certain rules and restrictions, whereas the original included such a specification in the conditions under which certain persons are authorized to sell the exclusive right to sepulture in a plot.

C.S.H.B. 2369 adds a provision not included in the original specifying that a quitclaim agreement or other instrument evidencing the conveyance of the exclusive right of sepulture must be in a form authorized by or otherwise acceptable to the cemetery organization. The substitute adds a provision not included in the original requiring a cemetery organization on request to provide its rules, forms, guidelines and procedures for brokered sales to a person acting as a cemetery broker.

C.S.H.B. 2369 omits a provision included in the original limiting a cemetery broker to using only a quitclaim agreement or other instrument of conveyance authorized by the cemetery organization in which the plot is located and instead requires the Texas Department of Banking to provide models for those instruments that can be modified by a cemetery organization. The substitute adds provisions not included in the original to expand the activities constituting a Class A misdemeanor offense to include offering or receiving monetary inducement to solicit business for a cemetery broker, and failing or refusing to register as a cemetery broker as required. The substitute adds provisions not included in the original to change the effective dates for certain provisions.

C.S.H.B. 2369 differs from the original in nonsubstantive ways by conforming to certain bill drafting conventions, and making conforming changes.