

By: Flynn

H.B. No. 2369

Substitute the following for H.B. No. 2369:

By: Coleman

C.S.H.B. No. 2369

A BILL TO BE ENTITLED

AN ACT

relating to the sale of a cemetery plot; providing a criminal penalty.

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

SECTION 1. Section 711.001, Health and Safety Code, is amended by adding Subdivision (2-a) to read as follows:

(2-a) "Cemetery broker" means a person who sells the exclusive right of sepulture for another person. The term does not include a person who:

(A) is an officer, agent, or employee of the cemetery organization in which the plot is located; or

(B) originally purchased the exclusive right of sepulture for personal use.

SECTION 2. Section 711.012(a), Health and Safety Code, is amended to read as follows:

(a) The Finance Commission of Texas may adopt rules to enforce and administer:

(1) Sections 711.003, 711.008, 711.021-711.024, 711.032-711.035, 711.038, 711.0381, 711.040-711.042, 711.052, 711.061, and 711.062 relating to perpetual care cemeteries; and

(2) Subchapter C-1 relating to registration of cemetery brokers.

SECTION 3. The heading to Section 711.038, Health and Safety Code, is amended to read as follows:

1 Sec. 711.038. SALE OF PLOTS BY CEMETERY ORGANIZATIONS.

2 SECTION 4. Section 711.038, Health and Safety Code, is
3 amended by amending Subsection (e) and adding Subsection (f) to
4 read as follows:

5 (e) A person who is an officer, agent, or employee of the
6 cemetery organization or its affiliate is not required to be
7 licensed to sell a plot in a dedicated cemetery.

8 (f) The Texas Department of Banking shall provide model
9 quitclaim agreements or other instruments of conveyance for use in
10 transferring the exclusive right of sepulture under this section.
11 A cemetery organization may modify the model forms to include
12 additional provisions considered necessary to conform to the
13 practices and policies of the cemetery organization in which the
14 plot is located.

15 SECTION 5. Subchapter C, Chapter 711, Health and Safety
16 Code, is amended by adding Section 711.0381 to read as follows:

17 Sec. 711.0381. RESALE OF PLOTS BY CERTAIN PERSONS. (a) A
18 person may not act as a cemetery broker in the resale of the
19 exclusive right of sepulture in a plot unless the person is a
20 registered cemetery broker or is exempt from registration under
21 Subchapter C-1.

22 (b) Resale of the exclusive right of sepulture in a plot is
23 subject to the rules of the cemetery organization and any
24 restrictions in the certificate of ownership, quitclaim agreement,
25 or other instrument of conveyance. A quitclaim agreement or other
26 instrument evidencing the conveyance of the exclusive right of
27 sepulture must be:

1 (1) in a form authorized by or otherwise acceptable to
2 the cemetery organization, subject to Subsection (c);

3 (2) signed by:

4 (A) the grantee named in the certificate of
5 ownership or other instrument of conveyance as filed and recorded
6 in the cemetery organization's office in accordance with Section
7 711.038, as the seller or transferor;

8 (B) the designated purchaser or transferee; and

9 (C) each cemetery broker or other agent assisting
10 in the transfer of the interment rights; and

11 (3) filed and recorded with the cemetery organization
12 not later than the third business day after the date of the sale.

13 (c) On request of a person acting as a cemetery broker, a
14 cemetery organization shall provide its rules, conveyance forms,
15 and written guidelines and procedures for brokered sales, if any.

16 (d) The sale of the exclusive right of sepulture in a group
17 of interment rights that were conveyed collectively may not be
18 divided without the consent of the cemetery organization.

19 (e) A person acting as a cemetery broker that sells the
20 right of sepulture in a plot shall collect and remit to the cemetery
21 organization:

22 (1) all fees required under Section 712.028; and

23 (2) any other fee required by the rules of the cemetery
24 organization subject to Subsection (f).

25 (f) A fee required by a rule of the cemetery organization
26 for the sale of the right of sepulture in a plot under this section
27 may not exceed the fee charged on the sale of the right of sepulture

1 in a plot by the cemetery organization under Section 711.038.

2 (g) A person acting as a cemetery broker must keep a record
3 of each sale under this section. The record must include:

4 (1) the name and address of the purchaser;

5 (2) the date of the purchase;

6 (3) a copy of the purchase agreement, with the name and
7 address of the cemetery;

8 (4) a specific description of the interment rights;

9 (5) the purchase price;

10 (6) the amount of fees collected and remitted in
11 accordance with Subsection (e); and

12 (7) information on the disposal of the purchase
13 agreement, including whether the agreement was conveyed, canceled,
14 or voided.

15 SECTION 6. Chapter 711, Health and Safety Code, is amended
16 by adding Subchapter C-1 to read as follows:

17 SUBCHAPTER C-1. CEMETERY BROKER REGISTRATION

18 Sec. 711.045. DEFINITIONS. In this subchapter:

19 (1) "Commission" means the Finance Commission of
20 Texas.

21 (2) "Commissioner" means the banking commissioner of
22 Texas.

23 (3) "Department" means the Texas Department of
24 Banking.

25 Sec. 711.046. CEMETERY BROKER REGISTRATION. (a) A person
26 may not act as a cemetery broker in the sale of the exclusive right
27 of sepulture in a plot unless the person is registered under this

1 subchapter as a cemetery broker or is exempt from registration
2 under Section 711.047. To register under this subchapter, a
3 cemetery broker shall file with the department a sworn, notarized
4 statement that contains:

5 (1) the name and address of the cemetery broker;

6 (2) the name, address, and telephone number of the
7 representative of the cemetery broker to be contacted regarding a
8 written complaint; and

9 (3) any Internet or other electronic mail address of
10 the cemetery broker.

11 (b) The registration of a cemetery broker is valid until
12 withdrawn or revoked. Periodic renewal of the registration is not
13 required.

14 (c) A registered cemetery broker shall update the
15 information contained in the registration statement not later than
16 the 60th day after the date the information changes.

17 (d) The department may charge a cemetery broker a reasonable
18 fee to cover the costs of filing and maintaining the registration
19 statement and administering this chapter. The administration fee
20 may not exceed \$100 per year.

21 Sec. 711.047. EXEMPTIONS. This subchapter does not apply
22 to a person offering to sell or selling the exclusive right of
23 sepulture in a plot if the person is:

24 (1) an officer, agent, employee, or affiliate of the
25 cemetery organization in which the plot is located, acting at the
26 direction or under the control of the cemetery organization;

27 (2) an employee of a registered cemetery broker;

1 (3) with respect to the specific plot for sale:

2 (A) a grantee named in the certificate of
3 ownership or other instrument of conveyance for the plot as filed
4 and recorded in the cemetery organization's office under Section
5 711.038;

6 (B) a spouse or other heir of the named grantee as
7 described by Section 711.039;

8 (C) an executor, administrator, or guardian of
9 the named grantee appointed by court order; or

10 (D) an attorney-in-fact for the named grantee
11 under a durable power of attorney if the person is not otherwise
12 engaged in the business of a cemetery broker and does not solicit
13 appointment as attorney-in-fact for the purpose of offering to sell
14 or selling the exclusive right of sepulture of the named grantee; or

15 (4) otherwise exempt in accordance with rules adopted
16 by the commission as necessary to protect the public health and
17 safety.

18 Sec. 711.048. PUBLIC INFORMATION; COMPLAINTS. (a) The
19 department shall prepare a brochure with information of public
20 interest:

21 (1) explaining matters relating to the resale of plots
22 by a cemetery broker, including disclosure that the sale is not
23 complete until registered with the cemetery organization; and

24 (2) describing the department's procedures for filing
25 and resolving a complaint.

26 (b) The department shall:

27 (1) provide each registered cemetery broker with the

1 number of brochures the department considers appropriate for a fee
2 to recover the department's costs; and

3 (2) make the brochure available to the public and
4 appropriate state agencies.

5 (c) A cemetery broker shall provide the brochure on the
6 initial inquiry to the cemetery broker by a plot owner or the
7 representative of a plot owner regarding the potential resale of
8 the exclusive right of sepulture in the plot.

9 (d) A cemetery broker is subject to rules adopted under
10 Section 11.307, Finance Code, regarding the manner in which the
11 cemetery broker provides consumers with information on how to file
12 complaints with the department. The rules must be consistent with
13 the obligations imposed by this section.

14 (e) If the department receives a signed written complaint
15 from a person concerning a cemetery broker, the department shall
16 notify the cemetery broker's designated representative in writing
17 of the complaint not later than the 31st day after the date the
18 complaint was received and provide a copy of the complaint to the
19 representative. The department may:

20 (1) require the cemetery broker to resolve the
21 complaint or to provide the department with a response to the
22 complaint; or

23 (2) direct the cemetery broker in writing to take
24 specific action to resolve the complaint.

25 Sec. 711.049. TERMINATION OF REGISTRATION. (a) A cemetery
26 broker may withdraw the cemetery broker's registration at any time.

27 (b) After notice and hearing, the commissioner may revoke

1 the registration of a registered cemetery broker that:

2 (1) fails to pay the annual administration fee and
3 fails to cure the default not later than the 30th day after the date
4 written notice of the default is mailed by the department to the
5 cemetery broker;

6 (2) fails or refuses to comply with the department's
7 written request for a response to a complaint; or

8 (3) the commissioner concludes, after considering a
9 complaint filed under this chapter, has engaged in an intentional
10 course of conduct that:

11 (A) violates federal or state law; or

12 (B) constitutes improper, fraudulent, or
13 dishonest dealings.

14 (c) The commissioner shall state the basis of the decision
15 in an order revoking the registration of a cemetery broker. The
16 cemetery broker may appeal an order revoking registration in the
17 manner provided by Chapter 2001, Government Code.

18 SECTION 7. Section 711.052(a), Health and Safety Code, is
19 amended to read as follows:

20 (a) A person who is an individual, firm, association,
21 corporation, or municipality, or an officer, agent, or employee of
22 an individual, firm, association, corporation, or municipality,
23 commits an offense if the person:

24 (1) engages in a business for cemetery purposes in
25 this state other than through a corporation organized for that
26 purpose, if a corporation is required by law;

27 (2) fails or refuses to keep records of interment as

required by Sections 711.003 and 711.004;

(3) sells, offers to sell, or advertises for sale a plot or the exclusive right of sepulture in a plot for purposes of speculation or investment; ~~[or]~~

(4) represents through advertising or printed material that a retail department will be established for the resale of the plots of plot purchasers, that specific improvements will be made in the cemetery, or that specific merchandise or services will be furnished to a plot owner, unless adequate funds or reserves are created by the cemetery organization for the represented purpose;

(5) offers or receives monetary inducement to solicit business for a cemetery broker;

(6) fails or refuses to keep records of resales or to collect and remit fees as required by Section 711.0381; or

(7) fails or refuses to register as a cemetery broker as required by Subchapter C-1.

SECTION 8. (a) Except as provided by Subsections (b) and (c) of this section, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. Except as provided by Subsections (b) and (c) of this section, if this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2009.

(b) Section 711.038(f), Health and Safety Code, as added by this Act, takes effect September 1, 2010.

(c) Subchapter C-1, Chapter 711, Health and Safety Code, as

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1 added by this Act, takes effect January 1, 2010, except that
2 Sections 711.048(a) through (c), Health and Safety Code, as added
3 by this Act, take effect September 1, 2010.