

By: Flynn

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 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.

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

Sec. 711.038. SALE OF PLOTS BY CEMETERY ORGANIZATIONS.

SECTION 4. Section 711.038(e), Health and Safety Code, is amended to read as follows:

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

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

6 Sec. 711.0381. SALE OF PLOTS BY CERTAIN PERSONS. (a) A  
7 person who is not an officer, agent, or employee of the cemetery  
8 organization in which a plot is located may act as a cemetery broker  
9 in the sale of the exclusive right of sepulture in the plot:

10 (1) if the person is:

11 (A) the person named as grantee in the quitclaim  
12 agreement or other instrument of conveyance;

13 (B) an heir of the grantee as described by  
14 Section 711.039; or

15 (C) the grantee's agent who is registered with  
16 the commission;

17 (2) subject to the rules of the cemetery organization  
18 and the restrictions in the quitclaim agreement or other instrument  
19 of conveyance;

20 (3) after a quitclaim agreement or other instrument of  
21 conveyance that is acceptable to the cemetery organization is filed  
22 and recorded with the cemetery organization;

23 (4) after payment in full to the cemetery organization  
24 of any fees related to the transfer of ownership of the exclusive  
25 right of sepulture in the plot; and

26 (5) after payment in full of the purchase price of the  
27 exclusive right of sepulture in the plot.

1       (b) A quitclaim agreement or other instrument evidencing  
2 the conveyance of the exclusive right of sepulture must be filed  
3 with the cemetery organization not later than the third business  
4 day after the date of the sale, and must be signed by the person  
5 named in the original instrument of conveyance as the transferor or  
6 the transferee and by any agent assisting in the transfer of the  
7 interment rights.

8       (c) The sale of the exclusive right of sepulture in a group  
9 of interment rights that were conveyed collectively may not be  
10 divided without the consent of the cemetery organization.

11       (d) A person selling the right of sepulture in a plot shall  
12 collect and remit to the cemetery organization all fees required  
13 under Section 712.028.

14       (e) A person selling the right of sepulture in a plot must  
15 collect and remit all other fees as required by the rules of the  
16 cemetery organization. Fees required by the rules of the cemetery  
17 organization for the sale of the right of sepulture in a plot under  
18 this section may not exceed the fees charged on the sale of the  
19 right of sepulture in a plot by the cemetery organization under  
20 Section 711.038.

21       (f) A cemetery broker must keep a record of each sale under  
22 this section. The record must include:

- 23               (1) the name and address of the purchaser;  
24               (2) the date of the purchase;  
25               (3) a copy of the purchase agreement, with the name and  
26 address of the cemetery;  
27               (4) a specific description of the interment rights;

1           (5) the purchase price;

2           (6) the amount of fees collected and remitted in  
3 accordance with Subsection (d); and

4           (7) information on the disposal of the purchase  
5 agreement, including whether the agreement was conveyed, canceled,  
6 or voided.

7           (g) A person acting as a cemetery broker may only use the  
8 quitclaim agreement or other instrument conveying ownership that is  
9 authorized by the cemetery organization in which the plot is  
10 located.

11           (h) A person who is not an officer, agent, or employee of the  
12 cemetery organization in which the plot is located must register  
13 with the Finance Commission of Texas to act as a cemetery broker in  
14 the sale of the exclusive right of sepulture in a plot.

15           SECTION 6. Section 711.052(a), Health and Safety Code, is  
16 amended to read as follows:

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

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

24           (2) fails or refuses to keep records of interment as  
25 required by Sections 711.003 and 711.004;

26           (3) sells, offers to sell, or advertises for sale a  
27 plot or the exclusive right of sepulture in a plot for purposes of

1 speculation or investment; [~~or~~]

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

9 (5) fails or refuses to keep records of sales or fails  
10 or refuses to collect and remit fees as required by Section  
11 711.0381.

12 SECTION 7. This Act takes effect immediately if it receives  
13 a vote of two-thirds of all the members elected to each house, as  
14 provided by Section 39, Article III, Texas Constitution. If this  
15 Act does not receive the vote necessary for immediate effect, this  
16 Act takes effect September 1, 2009.