

BILL ANALYSIS

H.B. 2029
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Pensions, Investments & Financial Services
Committee Report (Unamended)

BACKGROUND AND PURPOSE

The transaction known in layman's terms as the purchase of a cemetery plot is in fact a transaction where the consumer obtains a property right and purchases the burial rights in a plot at a cemetery. A consumer may sell or will to an heir their property right in a plot, in some cases known as the exclusive right of sepulture. As Americans have become more likely to move from place to place, the sale of this property right has increased.

Third parties, as a line of business, have offered to help families sell their burial right. Most cemeteries are familiar with the third party sellers in their respective area, and most third party sellers generally conduct their business within a particular region. However, there has been a recent increase in the number of online third party sellers, and some websites advertise the sale of burial rights in multiple states. As the practice has become less regional, cemeteries have noticed an increase in the number of undocumented sales of burial rights. As in other property sales, deed to the property right is not final until the cemetery has received the required documentation. The consumer who purchases the right often is unaware of any problems with the purchase until the time for burial.

H.B. 2029 seeks to address these situations by requiring third party sellers to register as brokers with the Texas Department of Banking and establishing regulations regarding the filing of documentation with the cemetery to complete the sale and the collection and remittal of associated fees.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTIONS 2 and 10 of this bill.

ANALYSIS

H.B. 2029 amends the Health and Safety Code to prohibit 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 as a cemetery broker or is exempt from registration under the bill's provisions. The bill exempts from that registration requirement a person offering to sell or selling the exclusive right of sepulture in a plot if the person is an officer, agent, employee, or affiliate of the cemetery organization in which the plot is located, acting at the direction or under the control of the cemetery organization; an employee of a registered cemetery broker; with respect to a specific plot for sale, named as one of certain specified grantees of the exclusive right of sepulture; or otherwise exempt in accordance with Finance Commission of Texas rule. The bill requires a cemetery broker, to register as a cemetery broker, to file with the Texas Department of Banking a sworn, notarized statement that contains certain identifying and contact information. The bill makes the registration of a cemetery broker valid until withdrawn or revoked and specifies 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 the 60th day after the date the information changes. The bill authorizes the department to charge a cemetery broker a

reasonable fee to cover the costs of filing and maintaining the registration statement and administering the bill's provisions. The bill prohibits the administration fee from exceeding \$100 per year.

H.B. 2029 makes a cemetery broker subject to rules adopted by the commission regarding the manner in which the cemetery broker provides consumers with information on how to file complaints with the department and requires the rules to be consistent with the obligations imposed by the bill's provisions. The bill requires the department, on receipt of 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 provide the department with a response to the complaint or to direct the cemetery broker in writing to take specific action to resolve the complaint.

H.B. 2029 authorizes a cemetery broker to withdraw the cemetery broker's registration at any time. The bill authorizes the banking commissioner of Texas, after notice and opportunity for a hearing, to revoke the registration of a registered cemetery broker that fails to pay the annual administration fee and fails to cure the default not later than the 30th day after the date written notice of the default is mailed by the department to the cemetery broker; fails or refuses to comply with the department's written request for a response to a complaint; or the commissioner concludes, after considering a filed complaint, has engaged in an intentional course of conduct that violates federal or state law or constitutes improper, fraudulent, or dishonest dealings. The bill requires the 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. The bill makes its provisions relating to cemetery broker registration effective January 1, 2012.

H.B. 2029 creates a Class A misdemeanor offense for a person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of such an entity who offers or receives monetary inducement to solicit business for a cemetery broker; fails or refuses to keep records of resales or to collect and remit fees as required by the bill's provisions; or fails or refuses to register as a cemetery broker. The bill authorizes the commissioner to cancel or not renew a person's cemetery broker registration if, after a hearing conducted as provided by the Administrative Procedure Act, the trier of fact finds that a violation of statutory provisions relating to cemeteries or a rule of the commission establishes a pattern of willful disregard for such requirements and rules.

H.B. 2029 authorizes the commissioner to issue an emergency order that takes effect immediately if the commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a sale of the exclusive right of sepulture in a plot. The bill specifies that an emergency order remains in effect unless stayed by the commissioner. The bill authorizes the person named in the order to request in writing an opportunity for a hearing to show that the emergency order should be stayed. The bill requires the commissioner, on receipt of the request, to set a time for the hearing before the 22nd day after the date the commissioner received the request, unless extended at the request of the person named in the order. The bill makes the hearing an administrative hearing relating to the validity of findings that support immediate effect of the order.

H.B. 2029 authorizes the commissioner to issue an order to a person requiring restitution if, after notice and opportunity for hearing, the commissioner finds that the person failed to remit a fee in accordance with the bill's provisions or misappropriated, converted, or illegally withheld or failed or refused to pay on demand money entrusted to the person that belongs to a cemetery organization under an instrument of conveyance. The bill authorizes the commissioner to issue an order to seize accounts in which funds from the sale of the exclusive right of sepulture in a plot, including earnings, may be held.

H.B. 2029 authorizes the commissioner to issue an order to seize the records that relate to the sale of the exclusive right of sepulture in a plot if the commissioner finds, by examination or other credible evidence, that the person failed to remit a fee in accordance with the bill's provisions; misappropriated, converted, or illegally withheld or failed or refused to pay on demand money entrusted to the person that belongs to a cemetery organization under an instrument of conveyance; refused to submit to examination by the department; was the subject of an order to cancel, suspend, or refuse a registration as a cemetery broker; or is required to be registered as a cemetery broker and is not registered or transferred the ownership of the business that required registration to another person who is not registered.

H.B. 2029 requires an order to be served on the person named in the order by certified mail, return receipt requested, to the last known address of the person. The bill establishes that an order takes effect immediately and remains in effect unless stayed by the commissioner if the commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a sale of the exclusive right of sepulture in a plot. The bill requires the order, if such a threat does not exist, to state the effective date, which may not be before the 16th day after the date the order is mailed.

H.B. 2029 provides that an emergency order remains in effect unless stayed by the commissioner. The bill authorizes the person named in the order to request in writing an opportunity for a hearing to show that the emergency order should be stayed. The bill requires the commissioner, on receipt of the request, to set a time before the 22nd day after the date the commissioner received the request, unless extended at the request of the person named in the order. The bill provides that the hearing is an administrative hearing relating to the findings that support immediate effect of the order. The bill establishes that a nonemergency order takes effect as proposed unless the person named in the order requests a hearing not later than the 15th day after the date the order is mailed.

H.B. 2029 authorizes the commissioner, after the issuance of an order, to initiate an administrative claim for ancillary relief, including a claim for costs incurred in the administration, transfer, or other disposition of the seized assets and records or costs reasonably expected to be incurred in connection with the administration and performance of any outstanding certificate of ownership or other instrument of conveyance that is a part of a sale by the person subject to the order. The bill specifies that the remedy is not exclusive and authorizes the commissioner to seek an additional remedy authorized by the bill's provisions.

H.B. 2029 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 makes resale of the exclusive right of sepulture in a plot 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.

H.B. 2029 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. The bill 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 by law and any other fee required by the rules of the cemetery organization. The bill prohibits a fee required

by rule of the cemetery organization for the sale of the right of sepulture in a plot from exceeding the fee charged on the sale of the right of sepulture in a plot by the cemetery organization. The bill requires a person acting as a cemetery broker to keep record of each sale containing certain specified information. The bill specifies that the exemption from licensing requirements to sell a plot in a dedicated cemetery applies to a person who is an officer, agent, or employee of the cemetery organization or its affiliate.

H.B. 2029 requires the department to administer certain of its provisions and provisions of law relating to cemetery brokers, the resale of plots, and cemetery organizations. The bill authorizes the commission to adopt reasonable rules concerning fees to defray the cost of administering those provisions, the retention and inspection of records relating to the resale of the exclusive right of sepulture in a plot, changes in the management or control of a cemetery broker's business, and any other matter relating to the enforcement and administration of those provisions. The bill prohibits a fee set by the commission from producing unnecessary fund balances.

H.B. 2029 requires a person acting as a cemetery broker to maintain records relating to the resale of plots and requires the department to examine the records of each person acting as a cemetery broker if the commissioner determines the examination is necessary to safeguard the interests of purchasers and beneficiaries of the exclusive right of sepulture in a plot and to efficiently enforce applicable law. The bill authorizes a person to maintain and provide a record required to be maintained in an electronic format if the record is reliable and can be retrieved in a timely manner. The bill requires the commissioner or the commissioner's agent to impose on the cemetery broker a fee in an amount set by the commission and sufficient to cover specified costs of conducting the examination, the equitable or proportionate cost of maintaining and operating the department, and the cost of enforcing the department's powers and duties relating to cemetery brokers.

H.B. 2029 expands the rulemaking authority of the Finance Commission of Texas to include cemetery broker registration and the resale of plots by certain persons. The bill defines "cemetery broker," "commission," "commissioner," and "department."

EFFECTIVE DATE

Except as otherwise provided, on passage, or, if the bill does not receive the necessary vote, September 1, 2011.