

By: Flynn

H.B. No. 2029

A BILL TO BE ENTITLED

AN ACT

relating to the sale of a cemetery plot; providing penalties.

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-b) to read as follows:

(2-b) "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 Subchapter C-1 and Sections 711.003, 711.004, 711.007, 711.008, 711.0105, 711.021-711.024, 711.032-711.036, 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. RESALE OF PLOTS BY CERTAIN PERSONS. (a) A
7 person may not act as a cemetery broker in the resale of the
8 exclusive right of sepulture in a plot unless the person is a
9 registered cemetery broker or is exempt from registration under
10 Subchapter C-1.

11 (b) Resale of the exclusive right of sepulture in a plot is
12 subject to the rules of the cemetery organization and any
13 restrictions in the certificate of ownership, quitclaim agreement,
14 or other instrument of conveyance. A quitclaim agreement or other
15 instrument evidencing the conveyance of the exclusive right of
16 sepulture must be:

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

19 (2) signed by:

20 (A) the grantee named in the certificate of
21 ownership or other instrument of conveyance as filed and recorded
22 in the cemetery organization's office in accordance with Section
23 711.038, as the seller or transferor;

24 (B) the designated purchaser or transferee; and

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

27 (3) filed and recorded with the cemetery organization

1 not later than the third business day after the date of the sale.

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

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

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

11 (1) all fees required by law; and

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

14 (f) A fee required by a rule of the cemetery organization
15 for the sale of the right of sepulture in a plot under this section
16 may not exceed the fee charged on the sale of the right of sepulture
17 in a plot under Section 711.038 by the cemetery organization.

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

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

21 (2) the date of the purchase;

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

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

25 (5) the purchase price;

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

1 (7) information on the disposal of the purchase
2 agreement, including whether the agreement was conveyed, canceled,
3 or voided.

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

6 SUBCHAPTER C-1. CEMETERY BROKER REGISTRATION

7 Sec. 711.045. DEFINITIONS. In this subchapter:

8 (1) "Commission" means the Finance Commission of
9 Texas.

10 (2) "Commissioner" means the banking commissioner of
11 Texas.

12 (3) "Department" means the Texas Department of
13 Banking.

14 Sec. 711.046. CEMETERY BROKER REGISTRATION. (a) A person
15 may not act as a cemetery broker in the sale of the exclusive right
16 of sepulture in a plot unless the person is registered under this
17 subchapter as a cemetery broker or is exempt from registration
18 under Section 711.047. To register under this subchapter, a
19 cemetery broker shall file with the department a sworn, notarized
20 statement that contains:

21 (1) the name and street address of the cemetery
22 broker;

23 (2) the name, street address, and telephone number of
24 the representative of the cemetery broker to be contacted regarding
25 a written complaint; and

26 (3) any Internet or other electronic mail address of
27 the cemetery broker.

1 (b) The registration of a cemetery broker is valid until
2 withdrawn or revoked. Periodic renewal of the registration is not
3 required.

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

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

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

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

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

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

19 (A) a grantee named in the certificate of
20 ownership or other instrument of conveyance for the plot as filed
21 and recorded in the cemetery organization's office under Section
22 711.038;

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

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

27 (D) an attorney-in-fact for the named grantee

1 under a durable power of attorney if the person is not otherwise
2 engaged in the business of a cemetery broker and does not solicit
3 appointment as attorney-in-fact for the purpose of offering to sell
4 or selling the exclusive right of sepulture of the named grantee; or
5 (4) otherwise exempt in accordance with rules adopted
6 by the commission as necessary to protect the public health and
7 safety.

8 Sec. 711.048. COMPLAINTS. (a) A cemetery broker is subject
9 to rules adopted under Section 11.307, Finance Code, regarding the
10 manner in which the cemetery broker provides consumers with
11 information on how to file complaints with the department. The
12 rules must be consistent with the obligations imposed by this
13 section.

14 (b) 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 opportunity for a hearing, the

1 commissioner may revoke the registration of a registered cemetery
2 broker that:

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

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

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

12 (A) violates federal or state law; or

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

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

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

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

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

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

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

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

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

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

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

19 SECTION 8. Section 711.056(a), Health and Safety Code, is
20 amended to read as follows:

21 (a) If after a hearing conducted as provided by Chapter
22 2001, Government Code, the trier of fact finds that a violation of
23 this chapter or a rule of the Finance Commission of Texas
24 establishes a pattern of wilful disregard for the requirements of
25 this chapter or rules of the finance commission, the trier of fact
26 shall recommend to the commissioner that the maximum administrative
27 penalty permitted under Section 711.055 be imposed on the person

1 committing the violation or that the commissioner cancel or not
2 renew:

3 (1) the person's registration under Subchapter C-1, if
4 the person is registered under that subchapter; or

5 (2) the person's permit under Chapter 154, Finance
6 Code, if the person holds such a permit.

7 SECTION 9. Subchapter D, Chapter 711, Health and Safety
8 Code, is amended by adding Sections 711.057, 711.058, and 711.059
9 to read as follows:

10 Sec. 711.057. EMERGENCY ORDER. (a) The commissioner may
11 issue an emergency order that takes effect immediately if the
12 commissioner finds that immediate and irreparable harm is
13 threatened to the public or a beneficiary under a sale of the
14 exclusive right of sepulture in a plot.

15 (b) An emergency order remains in effect unless stayed by
16 the commissioner.

17 (c) The person named in the order may request in writing an
18 opportunity for a hearing to show that the emergency order should be
19 stayed. On receipt of the request, the commissioner shall set a
20 time for the hearing before the 22nd day after the date the
21 commissioner received the request, unless extended at the request
22 of the person named in the order.

23 (d) The hearing is an administrative hearing relating to the
24 validity of findings that support immediate effect of the order.

25 Sec. 711.058. RESTITUTION. The commissioner may issue an
26 order to a person requiring restitution if, after notice and
27 opportunity for hearing, the commissioner finds that the person:

1 (1) failed to remit a fee in accordance with Section
2 711.0381; or

3 (2) misappropriated, converted, or illegally withheld
4 or failed or refused to pay on demand money entrusted to the person
5 that belongs to a cemetery organization under an instrument of
6 conveyance.

7 Sec. 711.059. SEIZURE OF ACCOUNTS AND RECORDS. (a) The
8 commissioner may issue an order to seize accounts in which funds
9 from the sale of the exclusive right of sepulture in a plot,
10 including earnings, may be held and may issue an order to seize the
11 records that relate to the sale of the exclusive right of sepulture
12 in a plot if the commissioner finds, by examination or other
13 credible evidence, that the person:

14 (1) failed to remit a fee in accordance with Section
15 711.0381;

16 (2) misappropriated, converted, or illegally withheld
17 or failed or refused to pay on demand money entrusted to the person
18 that belongs to a cemetery organization under an instrument of
19 conveyance;

20 (3) refused to submit to examination by the
21 department;

22 (4) was the subject of an order to cancel, suspend, or
23 refuse a registration under Subchapter C-1; or

24 (5) is required to be registered under Subchapter C-1
25 and is not registered or transferred the ownership of the business
26 that required registration to another person who is not registered.

27 (b) An order shall be served on the person named in the order

1 by certified mail, return receipt requested, to the last known
2 address of the person.

3 (c) An order takes effect immediately and remains in effect
4 unless stayed by the commissioner, if the commissioner finds that
5 immediate and irreparable harm is threatened to the public or a
6 beneficiary under a sale of the exclusive right of sepulture in a
7 plot. If such a threat does not exist, the order must state the
8 effective date, which may not be before the 16th day after the date
9 the order is mailed.

10 (d) An emergency order remains in effect unless stayed by
11 the commissioner. The person named in the order may request in
12 writing an opportunity for a hearing to show that the emergency
13 order should be stayed. On receipt of the request, the commissioner
14 shall set a time before the 22nd day after the date the commissioner
15 received the request, unless extended at the request of the person
16 named in the order. The hearing is an administrative hearing
17 relating to the findings that support immediate effect of the
18 order.

19 (e) A nonemergency order takes effect as proposed unless the
20 person named in the order requests a hearing not later than the 15th
21 day after the date the order is mailed.

22 (f) After the issuance of an order under this section, the
23 commissioner may initiate an administrative claim for ancillary
24 relief, including a claim for:

25 (1) costs incurred in the administration, transfer, or
26 other disposition of the seized assets and records; or

27 (2) costs reasonably expected to be incurred in

1 connection with the administration and performance of any
2 outstanding certificate of ownership or other instrument of
3 conveyance that is a part of a sale by the person subject to the
4 order.

5 (g) The remedy provided by Subsection (f) is not exclusive.
6 The commissioner may seek an additional remedy authorized under
7 this subchapter.

8 SECTION 10. Chapter 711, Health and Safety Code, is amended
9 by adding Subchapter F to read as follows:

10 SUBCHAPTER F. POWERS AND DUTIES OF DEPARTMENT

11 RELATING TO CEMETERY BROKERS

12 Sec. 711.081. DEFINITIONS. In this subchapter:

13 (1) "Commission" means the Finance Commission of
14 Texas.

15 (2) "Commissioner" means the banking commissioner of
16 Texas.

17 (3) "Department" means the Texas Department of
18 Banking.

19 Sec. 711.082. ADMINISTRATION; FEES. (a) The department
20 shall administer Subchapters C and C-1 relating to cemetery
21 brokers.

22 (b) The commission may adopt reasonable rules concerning:

23 (1) fees to defray the cost of administering
24 Subchapters C and C-1;

25 (2) the retention and inspection of records relating
26 to the resale of the exclusive right of sepulture in a plot;

27 (3) changes in the management or control of a cemetery

1 broker's business; and

2 (4) any other matter relating to the enforcement and
3 administration of Subchapters C and C-1.

4 (c) A fee set by the commission may not produce unnecessary
5 fund balances.

6 Sec. 711.083. RECORDS; EXAMINATION. (a) A person acting as
7 a cemetery broker shall maintain records in accordance with this
8 subchapter and Section 711.0381.

9 (b) The department shall examine the records of each person
10 acting as a cemetery broker if the commissioner determines the
11 examination is necessary to:

12 (1) safeguard the interests of purchasers and
13 beneficiaries of the exclusive right of sepulture in a plot; and

14 (2) efficiently enforce applicable law.

15 (c) A person may maintain and provide a record required to
16 be maintained under this section in an electronic format if the
17 record is reliable and can be retrieved in a timely manner.

18 Sec. 711.084. EXAMINATION FEE. (a) For each examination
19 conducted under Section 711.083, the commissioner or the
20 commissioner's agent shall impose on the cemetery broker a fee in an
21 amount set by the commission under Section 711.082.

22 (b) The amount of the fee must be sufficient to cover:

23 (1) the cost of the examination, including:

24 (A) salary and travel expenses for department
25 employees, including travel to and from the place where the records
26 are kept; and

27 (B) any other expense necessarily incurred in

1 conducting the examination;

2 (2) the equitable or proportionate cost of maintaining
3 and operating the department; and

4 (3) the cost of enforcing this subchapter.

5 SECTION 11. (a) Except as provided by Subsection (b) of
6 this section, this Act takes effect immediately if it receives a
7 vote of two-thirds of all the members elected to each house, as
8 provided by Section 39, Article III, Texas Constitution. Except as
9 provided by Subsection (b) of this section, if this Act does not
10 receive the vote necessary for immediate effect, this Act takes
11 effect September 1, 2011.

12 (b) Subchapter C-1, Chapter 711, Health and Safety Code, as
13 added by this Act, takes effect January 1, 2012.