

1-1 By: Hernandez Luna (Senate Sponsor - Carona) H.B. No. 2495  
1-2 (In the Senate - Received from the House April 29, 2011;  
1-3 May 4, 2011, read first time and referred to Committee on Business  
1-4 and Commerce; May 10, 2011, reported favorably by the following  
1-5 vote: Yeas 9, Nays 0; May 10, 2011, sent to printer.)

1-6 A BILL TO BE ENTITLED  
1-7 AN ACT

1-8 relating to cemeteries and perpetual care cemetery corporations;  
1-9 providing a penalty.

1-10 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-11 SECTION 1. Section 711.001(3), Health and Safety Code, is  
1-12 amended to read as follows:

1-13 (3) "Cemetery organization" means:

1-14 (A) an unincorporated association of plot owners  
1-15 not operated for profit that is authorized by its articles of  
1-16 association to conduct a business for cemetery purposes; or

1-17 (B) a corporation, as defined by Section  
1-18 712.001(b)(3) [either for profit or not for profit], that is  
1-19 authorized by its certificate of formation or its registration  
1-20 [articles of incorporation] to conduct a business for cemetery  
1-21 purposes.

1-22 SECTION 2. Section 711.002, Health and Safety Code, is  
1-23 amended by adding Subsection (a-1) to read as follows:

1-24 (a-1) If the person with the right to control the  
1-25 disposition of the decedent's remains fails to make final  
1-26 arrangements or appoint another person to make final arrangements  
1-27 for the disposition before the earlier of the 6th day after the date  
1-28 the person received notice of the decedent's death or the 10th day  
1-29 after the date the decedent died, the person is presumed to be  
1-30 unable or unwilling to control the disposition, and:

1-31 (1) the person's right to control the disposition is  
1-32 terminated; and

1-33 (2) the right to control the disposition is passed to  
1-34 the following persons in the following priority:

1-35 (A) any other person in the same priority class  
1-36 under Subsection (a) as the person whose right was terminated; or

1-37 (B) a person in a different priority class, in  
1-38 the priority listed in Subsection (a).

1-39 SECTION 3. Section 711.061, Health and Safety Code, is  
1-40 amended to read as follows:

1-41 Sec. 711.061. REQUIREMENTS FOR LAWN CRYPTS. (a) A lawn  
1-42 crypt may not be installed unless:

1-43 (1) the lawn crypt is constructed of concrete and  
1-44 reinforced steel or other comparably durable material;

1-45 (2) the lawn crypt is installed on not less than six  
1-46 inches of rock, gravel, or other drainage material;

1-47 (3) the lawn crypt provides a method to drain water out  
1-48 of the lawn crypt;

1-49 (4) the outside top surface of the lawn crypt at the  
1-50 time of installation is at least 1-1/2 feet below the surface of the  
1-51 ground as required by Section 714.001(a)(2) and is capable of  
1-52 withstanding the weight of the soil and sod above the top surface  
1-53 and the weight of machinery and equipment normally used in the  
1-54 maintenance of the cemetery;

1-55 (5) the lawn crypt is installed in a garden or other  
1-56 section of the cemetery that has been dedicated for lawn crypt  
1-57 interment purposes in accordance with Section 711.034; and

1-58 (6) ~~except as provided by Section 711.062,~~ the lawn  
1-59 crypt is installed in multiple units of 10 or more or as prescribed  
1-60 by Subsection (b).

1-61 (b) A lawn crypt that is part of a private estate may be  
1-62 installed in fewer than 10 units. For purposes of this subsection,  
1-63 a private estate is a small section of a cemetery that has the  
1-64 following characteristics:

- 2-1           (1) is sold under a single contract;  
 2-2           (2) is usually offset from other burial sites;  
 2-3           (3) allows for interment of several members of the  
 2-4 same family or their designees; and  
 2-5           (4) is identified on the plat for cemetery property as  
 2-6 a private estate in accordance with Section 711.034.

2-7           SECTION 4. Subchapter E, Chapter 711, Health and Safety  
 2-8 Code, is amended by adding Sections 711.063 and 711.064 to read as  
 2-9 follows:

2-10           Sec. 711.063. CONSTRUCTION; DEFAULT. (a) A cemetery in  
 2-11 which undeveloped lawn crypt spaces are being sold or reserved for  
 2-12 sale shall begin construction on the lawn crypt section not later  
 2-13 than 48 months after the date of the first sale or reservation,  
 2-14 whichever is earlier, and must complete construction not later than  
 2-15 60 months after the date of the first sale or reservation, whichever  
 2-16 is earlier.

2-17           (b) If construction of a lawn crypt section described by  
 2-18 Subsection (a) does not begin or has not been completed by the dates  
 2-19 specified in Subsection (a), on the buyer's written request, the  
 2-20 cemetery shall refund the entire amount paid for the undeveloped  
 2-21 lawn crypt space not later than the 30th day after the date of the  
 2-22 buyer's request.

2-23           Sec. 711.064. CONTRACT DISCLOSURES. (a) A sales contract  
 2-24 for an undeveloped lawn crypt space must contain terms, whether in  
 2-25 English or Spanish, that inform the buyer:

2-26           (1) that the buyer may, after providing written  
 2-27 notice, cancel the contract for failure by the cemetery or  
 2-28 contractor to construct the lawn crypt space within the time limits  
 2-29 specified by Section 711.063(a) and receive a refund of the entire  
 2-30 amount paid under the contract for the undeveloped lawn crypt space  
 2-31 as described by Section 711.063(b); and

2-32           (2) of the options available under a fully paid  
 2-33 contract if the person to be interred in the undeveloped lawn crypt  
 2-34 space dies before completion of the related lawn crypt section,  
 2-35 including the option to:

2-36           (A) select a replacement lawn crypt space or  
 2-37 other interment acceptable to the buyer or the buyer's  
 2-38 representative;

2-39           (B) elect temporary interment of the human  
 2-40 remains or cremated remains in an existing mausoleum space until  
 2-41 the undeveloped lawn crypt space is completed, at which time the  
 2-42 cemetery shall disinter and reinter the human remains or cremated  
 2-43 remains at no additional charge to the buyer; or

2-44           (C) cancel the contract on written notice of the  
 2-45 buyer or the buyer's representative and receive a refund of the  
 2-46 entire amount paid under the contract for the undeveloped lawn  
 2-47 crypt space if:

2-48           (i) the cemetery does not offer a temporary  
 2-49 interment option; or

2-50           (ii) the buyer or the buyer's  
 2-51 representative does not accept a replacement lawn crypt or other  
 2-52 interment.

2-53           (b) A sales contract for undeveloped lawn crypt space must  
 2-54 comply with applicable regulations of the Federal Trade Commission,  
 2-55 including 16 C.F.R. Section 433.2, with respect to a contract  
 2-56 payable in installments.

2-57           (c) Each notice required by this section must be written in  
 2-58 plain language designed to be easily understood by the average  
 2-59 consumer and must be printed in an easily readable font and type  
 2-60 size.

2-61           SECTION 5. Section 712.001(b)(3), Health and Safety Code,  
 2-62 is amended to read as follows:

2-63           (3) "Corporation" means a filing entity or foreign  
 2-64 filing entity, as those terms are defined by Section 1.002,  
 2-65 Business Organizations Code, or an entity [~~corporation~~] that is  
 2-66 organized under this chapter, or any corresponding statute in  
 2-67 effect before September 1, 1993, to operate one or more perpetual  
 2-68 care cemeteries in this state.

2-69           SECTION 6. The heading to Section 712.003, Health and

3-1 Safety Code, is amended to read as follows:

3-2 Sec. 712.003. REGISTRATION [~~INCORPORATION~~] REQUIRED;  
3-3 MINIMUM CAPITAL.

3-4 SECTION 7. Section 712.003(a), Health and Safety Code, is  
3-5 amended to read as follows:

3-6 (a) A perpetual care cemetery may not be operated in this  
3-7 state unless a certificate of formation for a domestic filing  
3-8 entity or registration to transact business for a foreign filing  
3-9 entity is [~~articles of incorporation are~~] filed with the secretary  
3-10 of state showing:

3-11 (1) subscriptions and payments in cash for 100 percent  
3-12 of the entity's ownership or membership interests [~~the~~  
3-13 ~~corporation's full capital stock~~];

3-14 (2) the location of its perpetual care cemetery; and

3-15 (3) a certificate showing the deposit in its fund of  
3-16 the minimum amount required under Section 712.004.

3-17 SECTION 8. Subchapter A, Chapter 712, Health and Safety  
3-18 Code, is amended by adding Sections 712.0032 through 712.00395 to  
3-19 read as follows:

3-20 Sec. 712.0032. CERTIFICATE OF AUTHORITY REQUIREMENT. A  
3-21 corporation must hold a certificate of authority issued under this  
3-22 chapter to operate a perpetual care cemetery.

3-23 Sec. 712.0033. CERTIFICATE OF AUTHORITY APPLICATION; FEES.

3-24 (a) To obtain a certificate of authority to operate a perpetual care  
3-25 cemetery, an applicant must, not later than the 30th day after the  
3-26 date a corporation files its certificate of formation or  
3-27 application for registration with the secretary of state:

3-28 (1) file an application, made under oath, on a form  
3-29 prescribed by the department; and

3-30 (2) pay a filing fee in an amount set by the Finance  
3-31 Commission of Texas under Section 712.008.

3-32 (b) If the corporation fails to comply with Subsection (a),  
3-33 the commissioner may instruct the secretary of state to remove the  
3-34 corporation from the secretary's active records or cancel the  
3-35 corporation's registration. On an instruction from the  
3-36 commissioner under this subsection, the secretary of state shall  
3-37 remove the corporation from the secretary's active records or  
3-38 cancel the corporation's registration and serve notice of the  
3-39 cancellation on the corporation by registered or certified letter,  
3-40 addressed to the corporation's address.

3-41 (c) A fee or cost paid under this chapter in connection with  
3-42 an application or renewal is not refundable.

3-43 Sec. 712.0034. QUALIFICATIONS FOR CERTIFICATE OF  
3-44 AUTHORITY; INVESTIGATION. (a) The commissioner may investigate an  
3-45 applicant before issuing a certificate of authority.

3-46 (b) To qualify for a certificate of authority under this  
3-47 chapter, an applicant must demonstrate to the satisfaction of the  
3-48 commissioner that:

3-49 (1) the applicant's business ability, experience,  
3-50 character, financial condition, and general fitness warrant the  
3-51 public's confidence;

3-52 (2) the cemetery operations manager has at least two  
3-53 years of experience in cemetery management;

3-54 (3) the issuance of the certificate of authority is in  
3-55 the public interest;

3-56 (4) the applicant, a principal of the applicant, or a  
3-57 person who controls the applicant does not owe the department a  
3-58 delinquent fee, assessment, administrative penalty, or other  
3-59 amount imposed under this chapter or a rule adopted or order issued  
3-60 under this chapter; and

3-61 (5) the applicant corporation:

3-62 (A) is in good standing and statutory compliance  
3-63 with this state;

3-64 (B) is authorized to engage in the perpetual care  
3-65 cemetery business in this state; and

3-66 (C) does not owe any delinquent franchise or  
3-67 other taxes to this state.

3-68 Sec. 712.0035. ISSUANCE OF CERTIFICATE OF AUTHORITY. (a)  
3-69 The commissioner shall issue a certificate of authority if the

4-1 commissioner finds that:

4-2 (1) the applicant meets the qualifications listed in  
 4-3 Section 712.0034 and it is reasonable to believe that the  
 4-4 applicant's cemetery business will be conducted fairly and  
 4-5 lawfully, according to applicable state and federal law, and in a  
 4-6 manner commanding the public's trust and confidence;

4-7 (2) the issuance of the certificate of authority is in  
 4-8 the public interest;

4-9 (3) the documentation and forms required to be  
 4-10 submitted by the applicant are acceptable; and

4-11 (4) the applicant has satisfied all requirements for  
 4-12 issuance of a certificate of authority.

4-13 (b) The applicant is entitled, on request, to a hearing on a  
 4-14 denial of the application. The request must be filed with the  
 4-15 commissioner not later than the 30th day after the date the notice  
 4-16 of denial is mailed. The hearing must be held not later than the  
 4-17 60th day after the date of the request unless the administrative law  
 4-18 judge extends the period for good cause or the parties agree to a  
 4-19 later hearing date. The hearing is a contested case under Chapter  
 4-20 2001, Government Code.

4-21 Sec. 712.0036. TERM OF CERTIFICATE OF AUTHORITY. An  
 4-22 initial certificate of authority expires March 1 of the year after  
 4-23 the year the certificate is issued. The certificate must be renewed  
 4-24 at that time and by March 1 of each following year.

4-25 Sec. 712.0037. RENEWAL OF CERTIFICATE OF AUTHORITY. (a) As  
 4-26 a condition of renewal, a certificate holder must meet the  
 4-27 qualifications and satisfy the requirements that apply to an  
 4-28 applicant for a new certificate of authority. Additionally, not  
 4-29 later than the certificate's annual renewal date, a certificate  
 4-30 holder shall:

4-31 (1) pay an annual renewal fee in an amount established  
 4-32 by Finance Commission of Texas rule; and

4-33 (2) submit a renewal report under oath and in the form  
 4-34 and medium required by the commissioner that demonstrates that the  
 4-35 certificate holder meets the qualifications and requirements for  
 4-36 holding a certificate.

4-37 (b) If the department does not receive a certificate  
 4-38 holder's renewal fee and complete renewal report on or before the  
 4-39 certificate's renewal date, the commissioner:

4-40 (1) shall notify the certificate holder in writing  
 4-41 that the certificate holder must submit the renewal report and pay  
 4-42 the renewal fee not later than the 30th day after the certificate's  
 4-43 renewal date; and

4-44 (2) may require the certificate holder to pay a late  
 4-45 fee, in an amount established by Finance Commission of Texas rule  
 4-46 and not subject to appeal, for each business day after the  
 4-47 certificate's renewal date that the commissioner does not receive  
 4-48 the completed renewal report and renewal fee.

4-49 (c) On timely receipt of a certificate holder's complete  
 4-50 renewal report and renewal fee and any late fee, the department  
 4-51 shall review the report and the commissioner may:

4-52 (1) renew the certificate of authority; or

4-53 (2) refuse to renew the certificate of authority and  
 4-54 take other action the commissioner considers appropriate.

4-55 (d) The applicant on request is entitled to a hearing to  
 4-56 contest the commissioner's refusal to renew the certificate. The  
 4-57 request must be filed with the commissioner not later than the 30th  
 4-58 day after the date the notice of refusal to renew is mailed. The  
 4-59 hearing is a contested case under Chapter 2001, Government Code.

4-60 (e) The holder or principal of or the person in control of  
 4-61 the holder of an expired certificate of authority, or the holder or  
 4-62 principal of or person in control of the holder of a certificate of  
 4-63 authority surrendered under Section 712.00395, who wishes to  
 4-64 conduct activities for which a certificate of authority is required  
 4-65 under this chapter shall file a new application for a certificate of  
 4-66 authority and satisfy all requirements for the certificate that  
 4-67 apply at the time the new application is filed.

4-68 Sec. 712.0038. TRANSFER OR ASSIGNMENT PROHIBITED. A  
 4-69 certificate of authority issued under this chapter may not be

5-1 transferred or assigned.

5-2 Sec. 712.0039. TRANSFER OF BUSINESS OWNERSHIP; CHANGE OF  
 5-3 CONTROL. (a) A certificate holder shall notify the department in  
 5-4 writing of a transfer of ownership of the certificate holder's  
 5-5 business or a transfer of 25 percent or more of the stock or other  
 5-6 ownership or membership interest of the corporation as follows:

5-7 (1) in the case of a voluntary transfer, not later than  
 5-8 the seventh day after the date the contract for transfer is  
 5-9 executed; and

5-10 (2) in the case of an involuntary transfer, not later  
 5-11 than one business day after receiving notice of the impending  
 5-12 foreclosure or other involuntary transfer.

5-13 (b) If the proposed transferee is not a certificate holder,  
 5-14 the proposed transferee shall file any necessary documents with the  
 5-15 secretary of state and an application for a certificate of  
 5-16 authority with the department as required by this chapter. The  
 5-17 transfer of the perpetual care fund may not occur until after the  
 5-18 date a certificate of authority is issued to the transferee  
 5-19 applicant.

5-20 (c) If the commissioner denies the application, a hearing  
 5-21 may be requested and conducted according to the procedures in  
 5-22 Section 712.0035(b).

5-23 Sec. 712.00395. SURRENDER OF CERTIFICATE OF AUTHORITY; FEE.

5-24 (a) A certificate holder may apply to the commissioner for  
 5-25 permission to surrender the certificate of authority if the holder:

5-26 (1) is a cemetery that qualified for an exemption  
 5-27 under Section 711.021(g), but voluntarily elected to become a  
 5-28 perpetual care cemetery;

5-29 (2) has performed not more than 10 burials per year  
 5-30 during each of the last five years;

5-31 (3) is not larger than 10 acres; and

5-32 (4) has a perpetual care fund that is less than  
 5-33 \$30,000.

5-34 (b) The application for permission to surrender a  
 5-35 certificate of authority must be sworn to and be on a form  
 5-36 prescribed by the department.

5-37 (c) The certificate holder shall publish a notice of  
 5-38 intention to surrender a certificate of authority to operate a  
 5-39 perpetual care cemetery one time in a newspaper of general  
 5-40 circulation in each county in which the cemetery is located. The  
 5-41 notice must:

5-42 (1) be in the form and include the information  
 5-43 required by the banking commissioner;

5-44 (2) state that:

5-45 (A) the certificate holder is applying to  
 5-46 surrender the holder's certificate of authority to operate a  
 5-47 perpetual care cemetery;

5-48 (B) a cemetery plot owner or cemetery plot  
 5-49 owner's heir may request a hearing to contest the surrender; and

5-50 (C) a request for a hearing must be filed with the  
 5-51 department not later than the 14th day after the date the notice is  
 5-52 published.

5-53 (d) The certificate holder shall submit, not later than the  
 5-54 seventh day after the date the notice is published, a publisher's  
 5-55 affidavit evidencing publication of the notice.

5-56 (e) If a request for hearing is timely filed by a plot owner  
 5-57 or plot owner's heir, the commissioner shall hold a hearing in  
 5-58 accordance with Chapter 2001, Government Code.

5-59 (f) If a request for a hearing is not timely filed by a plot  
 5-60 owner or plot owner's heir, the commissioner may approve or deny the  
 5-61 application.

5-62 (g) If an application is denied, and if a hearing is not held  
 5-63 before the denial, the applicant may request a hearing to appeal the  
 5-64 denial of the application. The applicant's request for a hearing  
 5-65 must be filed with the commissioner not later than the 30th day  
 5-66 after the date the notice of denial is mailed. The hearing is a  
 5-67 contested case under Chapter 2001, Government Code.

5-68 (h) An order approving the surrender of a certificate of  
 5-69 authority must impose four conditions that are not subject to

6-1 objection. Failure to satisfy any of these conditions constitutes  
 6-2 a violation of the commissioner's order, and the certificate holder  
 6-3 is subject to an enforcement action under this chapter. The order  
 6-4 approving the surrender must:

6-5 (1) require the perpetual care fund to remain in an  
 6-6 irrevocable trust, with the income to be used for perpetual care of  
 6-7 the cemetery in general and for those plots that were purchased  
 6-8 before the certificate was surrendered;

6-9 (2) require that the cemetery remove any signage or  
 6-10 other announcement stating that the cemetery is a perpetual care  
 6-11 cemetery;

6-12 (3) require each contract and other evidence of  
 6-13 ownership entered into after the date of the order to clearly state  
 6-14 that the cemetery is not regulated by the Texas Department of  
 6-15 Banking and may not use the term "perpetual care cemetery"; and

6-16 (4) state the location of cemetery records and require  
 6-17 the cemetery to:

6-18 (A) retain existing records regarding the  
 6-19 perpetual care fund for five years after the date of the order; and

6-20 (B) continue to comply with all recordkeeping  
 6-21 requirements of Chapter 711.

6-22 (i) Not later than the 10th day after the date an order  
 6-23 approving the surrender of a certificate of authority is signed,  
 6-24 the certificate holder shall deliver the original certificate of  
 6-25 authority to the commissioner along with a written notice of  
 6-26 surrender that includes the location of the certificate holder's  
 6-27 records and the name, address, telephone number, and other contact  
 6-28 information for an individual who is authorized to provide access  
 6-29 to the records.

6-30 (j) The surrender of a certificate of authority does not  
 6-31 reduce or eliminate a certificate holder's administrative, civil,  
 6-32 or criminal liability arising from any acts or omissions that occur  
 6-33 before the surrender of the certificate.

6-34 SECTION 9. Section 712.022, Health and Safety Code, is  
 6-35 amended to read as follows:

6-36 Sec. 712.022. OPERATION OF PERPETUAL CARE CEMETERY. A  
 6-37 corporation authorized by law to operate a perpetual care cemetery  
 6-38 but not doing so may do so if the corporation:

6-39 (1) complies with the requirements of this chapter for  
 6-40 obtaining a certificate of authority [~~notifies the commissioner~~];  
 6-41 and

6-42 (2) establishes a fund as provided by Section 712.021  
 6-43 in an amount equal to the larger of:

6-44 (A) the amount that would have been paid into the  
 6-45 fund if the cemetery operated as a perpetual care cemetery from the  
 6-46 date of the cemetery's first sale of plots; or

6-47 (B) the minimum amount provided by Section  
 6-48 712.004.

6-49 SECTION 10. Section 712.044(a), Health and Safety Code, is  
 6-50 amended to read as follows:

6-51 (a) The commissioner may examine on a periodic basis [~~annually or more often~~]  
 6-52 as the commissioner reasonably considers  
 6-53 necessary or appropriate to protect the interest of plot owners and  
 6-54 efficiently administer and enforce this chapter:

6-55 (1) the books and records of a corporation relating to  
 6-56 its fund, including deposits to or withdrawals from the fund,  
 6-57 income of the fund, and uses and expenditures of that income;

6-58 (2) the books and records of a corporation relating to  
 6-59 sales of undeveloped mausoleum spaces and any preconstruction trust  
 6-60 established by the corporation as provided by Section 712.063,  
 6-61 including deposits to or withdrawals from the preconstruction  
 6-62 trust, income of the preconstruction trust, and uses and  
 6-63 expenditures of principal and income of the preconstruction trust;  
 6-64 and

6-65 (3) the consumer complaint files of a corporation  
 6-66 relating to the fund, sales of undeveloped mausoleum spaces, a  
 6-67 preconstruction trust, or to discharge of the corporation's  
 6-68 perpetual care responsibilities, minutes of the corporation's  
 6-69 board of directors, cemetery dedication statements and plat maps,

7-1 and mausoleum and lawn crypt construction contracts and  
7-2 specifications.

7-3 SECTION 11. Section 712.0441, Health and Safety Code, is  
7-4 amended by amending Subsection (f) and adding Subsection (f-1) to  
7-5 read as follows:

7-6 (f) The commissioner may issue an order requiring  
7-7 restitution by a person [corporation] to the cemetery's [its] fund  
7-8 or to a preconstruction trust if, after notice and opportunity for  
7-9 hearing held in accordance with the procedures for a contested case  
7-10 hearing under Chapter 2001, Government Code [the Administrative  
7-11 Procedure and Texas Register Act], the commissioner finds that the  
7-12 corporation has not made a deposit in the fund as required by  
7-13 Section 712.028 or in the preconstruction trust as required by  
7-14 Section 712.063.

7-15 (f-1) The commissioner may issue an order requiring  
7-16 restitution by a person if, after notice and opportunity for a  
7-17 hearing held in accordance with the procedures for a contested case  
7-18 hearing under Chapter 2001, Government Code, the commissioner finds  
7-19 that the corporation has not ordered memorials, as defined by  
7-20 Section 711.001(20-a), in compliance with the deadlines  
7-21 established by rules adopted under this chapter.

7-22 SECTION 12. Section 712.0442(a), Health and Safety Code, is  
7-23 amended to read as follows:

7-24 (a) If, after a hearing conducted as provided by Chapter  
7-25 2001, Government Code, the trier of fact finds that a violation of  
7-26 this chapter or a rule of the Finance Commission of Texas  
7-27 establishes a pattern of wilful disregard for the requirements of  
7-28 this chapter or rules of the finance commission, the trier of fact  
7-29 may [shall] recommend to the commissioner that the maximum  
7-30 administrative penalty permitted under Section 712.0441 be imposed  
7-31 on the person committing the violation or that the commissioner  
7-32 cancel or not renew the corporation's certificate of authority  
7-33 [person's permit] under this chapter [Chapter 154, Finance Code,]  
7-34 if the person holds such a certificate [permit].

7-35 SECTION 13. Subchapter C, Chapter 712, Health and Safety  
7-36 Code, is amended by adding Sections 712.0443, 712.0444, and  
7-37 712.0445 to read as follows:

7-38 Sec. 712.0443. CEASE AND DESIST ORDER. (a) The  
7-39 commissioner may issue an order to cease and desist to a person if:

7-40 (1) the commissioner finds by examination or other  
7-41 credible evidence that the person has violated a law of this state  
7-42 relating to perpetual care cemeteries, including a violation of  
7-43 this chapter, the commissioner's final order, or a Finance  
7-44 Commission of Texas rule; and

7-45 (2) the violation was not corrected by the 31st day  
7-46 after the date the person receives written notice of the violation  
7-47 from the department.

7-48 (b) An order proposed under this section shall be served on  
7-49 the person and must state the grounds for the proposed order with  
7-50 reasonable certainty and the proposed effective date, which may not  
7-51 be less than the 20th day after the date the order is mailed or  
7-52 delivered. The order becomes effective on the proposed date unless  
7-53 the person requests a hearing not later than the 19th day after the  
7-54 date the order is mailed or delivered. If the person requests a  
7-55 hearing, the hearing shall be conducted in accordance with the  
7-56 procedures for a contested case hearing under Chapter 2001,  
7-57 Government Code.

7-58 Sec. 712.0444. EMERGENCY ORDER. (a) The commissioner may  
7-59 issue an emergency order that takes effect immediately if the  
7-60 commissioner finds that immediate and irreparable harm is  
7-61 threatened to the public or a plot owner, marker purchaser, or other  
7-62 person whose interests are protected by this chapter.

7-63 (b) An emergency order remains in effect unless stayed by  
7-64 the commissioner.

7-65 (c) The person named in the emergency order may request in  
7-66 writing, not later than the 18th day after the date the order is  
7-67 mailed, a hearing to show that the emergency order should be stayed.  
7-68 On receipt of the request, the commissioner shall set a time for the  
7-69 hearing not later than the 21st day after the date the commissioner

8-1 received the request, unless extended at the request of the person  
8-2 named in the order.

8-3 (d) The hearing is an administrative hearing relating to the  
8-4 validity of findings that support immediate effect of the order.

8-5 Sec. 712.0445. RECEIVERSHIP PROCEEDINGS. (a) In  
8-6 conjunction with a proceeding to forfeit the right to do business in  
8-7 this state brought by the attorney general, the attorney general  
8-8 may seek the appointment of a receiver. This remedy is in addition  
8-9 to other grounds for the appointment of a receiver.

8-10 (b) If the receiver is a private party, the receiver shall  
8-11 be compensated from the corporation or, if the corporation has no  
8-12 assets available to pay the receiver, from the income only of the  
8-13 perpetual care fund. The receiver may not invade the principal of  
8-14 the fund.

8-15 (c) The court may appoint a department employee as receiver.  
8-16 If the receiver is a department employee, the employee may not  
8-17 receive compensation for serving as receiver in addition to the  
8-18 employee's regular salary. The department may receive  
8-19 reimbursement from the corporation for the travel expenses and the  
8-20 fully allocated personnel costs associated with the employee's  
8-21 service as receiver.

8-22 (d) A department employee serving as receiver is not  
8-23 personally liable for damages arising from the employee's official  
8-24 act or omission unless the act or omission is corrupt or malicious.  
8-25 The attorney general shall defend an action brought against an  
8-26 employee serving as receiver because of an official act or omission  
8-27 as receiver regardless of whether the employee has terminated  
8-28 service with the department before the action commences.

8-29 SECTION 14. Section 712.048, Health and Safety Code, is  
8-30 amended by adding Subsection (c) to read as follows:

8-31 (c) A person commits an offense if the person collects money  
8-32 for the purchase of a memorial, as defined by Section 711.001, and  
8-33 knowingly defalcates or misappropriates the funds. An offense  
8-34 under this subsection is punishable as if it were an offense under  
8-35 Section 32.45, Penal Code. This subsection does not prevent an  
8-36 aggrieved party or the attorney general from maintaining a civil  
8-37 action for the recovery of damages, or the commissioner from  
8-38 maintaining an administrative action for restitution, caused by an  
8-39 injury resulting from an offense under this subsection.

8-40 SECTION 15. Sections 711.062, 712.0031, and 712.0441(e),  
8-41 Health and Safety Code, are repealed.

8-42 SECTION 16. A person who owns and operates a perpetual care  
8-43 cemetery on September 1, 2011, that on that date complies with  
8-44 Sections 712.003 and 712.0031, Health and Safety Code, as those  
8-45 sections existed before amendment or repeal by this Act, is  
8-46 automatically granted a certificate of authority. The certificate  
8-47 of authority expires March 1, 2012, unless the certificate holder  
8-48 renews the certificate in accordance with Section 712.0037, Health  
8-49 and Safety Code, as added by this Act.

8-50 SECTION 17. This Act takes effect September 1, 2011.

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