

By: Carona  
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S.B. No. 1167

A BILL TO BE ENTITLED

AN ACT

relating to cemeteries and perpetual care cemetery corporations;  
providing a penalty.

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

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

(3) "Cemetery organization" means:

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

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

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

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

1           (1) the person's right to control the disposition is  
2 terminated; and

3           (2) the right to control the disposition is passed to  
4 the following persons in the following priority:

5                   (A) any other person in the same priority class  
6 under Subsection (a) as the person whose right was terminated; or

7                   (B) a person in a different priority class, in  
8 the priority listed in Subsection (a).

9           SECTION 3. Section 711.061, Health and Safety Code, is  
10 amended to read as follows:

11           Sec. 711.061. REQUIREMENTS FOR LAWN CRYPTS. (a) A lawn  
12 crypt may not be installed unless:

13                   (1) the lawn crypt is constructed of concrete and  
14 reinforced steel or other comparably durable material;

15                   (2) the lawn crypt is installed on not less than six  
16 inches of rock, gravel, or other drainage material;

17                   (3) the lawn crypt provides a method to drain water out  
18 of the lawn crypt;

19                   (4) the outside top surface of the lawn crypt at the  
20 time of installation is at least 1-1/2 feet below the surface of the  
21 ground as required by Section 714.001(a)(2) and is capable of  
22 withstanding the weight of the soil and sod above the top surface  
23 and the weight of machinery and equipment normally used in the  
24 maintenance of the cemetery;

25                   (5) the lawn crypt is installed in a garden or other  
26 section of the cemetery that has been dedicated for lawn crypt  
27 interment purposes in accordance with Section 711.034; and

1           (6) [~~except as provided by Section 711.062,~~] the lawn  
2 crypt is installed in multiple units of 10 or more or as prescribed  
3 by Subsection (b).

4           (b) A lawn crypt that is part of a private estate may be  
5 installed in fewer than 10 units. For purposes of this subsection,  
6 a private estate is a small section of a cemetery that has the  
7 following characteristics:

8                   (1) is sold under a single contract;

9                   (2) is usually offset from other burial sites;

10                   (3) allows for interment of several members of the  
11 same family or their designees; and

12                   (4) is identified on the plat for cemetery property as  
13 a private estate in accordance with Section 711.034.

14           SECTION 4. Subchapter E, Chapter 711, Health and Safety  
15 Code, is amended by adding Sections 711.063 and 711.064 to read as  
16 follows:

17           Sec. 711.063. CONSTRUCTION; DEFAULT. (a) A cemetery in  
18 which undeveloped lawn crypt spaces are being sold or reserved for  
19 sale shall begin construction on the lawn crypt section not later  
20 than 48 months after the date of the first sale or reservation,  
21 whichever is earlier, and must complete construction not later than  
22 60 months after the date of the first sale or reservation, whichever  
23 is earlier.

24           (b) If construction of a lawn crypt section described by  
25 Subsection (a) does not begin or has not been completed by the dates  
26 specified in Subsection (a), on the buyer's written request, the  
27 cemetery shall refund the entire amount paid for the undeveloped

1 lawn crypt space not later than the 30th day after the date of the  
2 buyer's request.

3 Sec. 711.064. CONTRACT DISCLOSURES. (a) A sales contract  
4 for an undeveloped lawn crypt space must contain terms, whether in  
5 English or Spanish, that inform the buyer:

6 (1) that the buyer may, after providing written  
7 notice, cancel the contract for failure by the cemetery or  
8 contractor to construct the lawn crypt space within the time limits  
9 specified by Section 711.063(a) and receive a refund of the entire  
10 amount paid under the contract for the undeveloped lawn crypt space  
11 as described by Section 711.063(b); and

12 (2) of the options available under a fully paid  
13 contract if the person to be interred in the undeveloped lawn crypt  
14 space dies before completion of the related lawn crypt section,  
15 including the option to:

16 (A) select a replacement lawn crypt space or  
17 other interment acceptable to the buyer or the buyer's  
18 representative;

19 (B) elect temporary interment of the human  
20 remains or cremated remains in an existing mausoleum space until  
21 the undeveloped lawn crypt space is completed, at which time the  
22 cemetery shall disinter and reinter the human remains or cremated  
23 remains at no additional charge to the buyer; or

24 (C) cancel the contract on written notice of the  
25 buyer or the buyer's representative and receive a refund of the  
26 entire amount paid under the contract for the undeveloped lawn  
27 crypt space if:

1                   (i) the cemetery does not offer a temporary  
2 interment option; or

3                   (ii) the buyer or the buyer's  
4 representative does not accept a replacement lawn crypt or other  
5 interment.

6           (b) A sales contract for undeveloped lawn crypt space must  
7 comply with applicable regulations of the Federal Trade Commission,  
8 including 16 C.F.R. Section 433.2, with respect to a contract  
9 payable in installments.

10           (c) Each notice required by this section must be written in  
11 plain language designed to be easily understood by the average  
12 consumer and must be printed in an easily readable font and type  
13 size.

14           SECTION 5. Subdivision (3), Subsection (b), Section  
15 712.001, Health and Safety Code, is amended to read as follows:

16                   (3) "Corporation" means a filing entity or foreign  
17 filing entity, as those terms are defined by Section 1.002,  
18 Business Organizations Code, or an entity [~~corporation~~] that is  
19 organized under this chapter, or any corresponding statute in  
20 effect before September 1, 1993, to operate one or more perpetual  
21 care cemeteries in this state.

22           SECTION 6. The heading to Section 712.003, Health and  
23 Safety Code, is amended to read as follows:

24           Sec. 712.003. REGISTRATION [~~INCORPORATION~~] REQUIRED;  
25 MINIMUM CAPITAL.

26           SECTION 7. Subsection (a), Section 712.003, Health and  
27 Safety Code, is amended to read as follows:

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

6 (1) subscriptions and payments in cash for 100 percent  
7 of the entity's ownership or membership interests [~~the~~  
8 ~~corporation's full capital stock~~];

9 (2) the location of its perpetual care cemetery; and

10 (3) a certificate showing the deposit in its fund of  
11 the minimum amount required under Section 712.004.

12 SECTION 8. Subchapter A, Chapter 712, Health and Safety  
13 Code, is amended by adding Sections 712.0032 through 712.0039 and  
14 Section 712.00395 to read as follows:

15 Sec. 712.0032. CERTIFICATE OF AUTHORITY REQUIREMENT. A  
16 corporation must hold a certificate of authority issued under this  
17 chapter to operate a perpetual care cemetery.

18 Sec. 712.0033. CERTIFICATE OF AUTHORITY APPLICATION; FEES.

19 (a) To obtain a certificate of authority to operate a perpetual  
20 care cemetery, an applicant must, not later than the 30th day after  
21 the date a corporation files its certificate of formation or  
22 application for registration with the secretary of state:

23 (1) file an application, made under oath, on a form  
24 prescribed by the department; and

25 (2) pay a filing fee in an amount set by the Finance  
26 Commission of Texas under Section 712.008.

27 (b) If the corporation fails to comply with Subsection (a),

1 the commissioner may instruct the secretary of state to remove the  
2 corporation from the secretary's active records or cancel the  
3 corporation's registration. On an instruction from the  
4 commissioner under this subsection, the secretary of state shall  
5 remove the corporation from the secretary's active records or  
6 cancel the corporation's registration and serve notice of the  
7 cancellation on the corporation by registered or certified letter,  
8 addressed to the corporation's address.

9 (c) A fee or cost paid under this chapter in connection with  
10 an application or renewal is not refundable.

11 Sec. 712.0034. QUALIFICATIONS FOR CERTIFICATE OF  
12 AUTHORITY; INVESTIGATION. (a) The commissioner may investigate  
13 an applicant before issuing a certificate of authority.

14 (b) To qualify for a certificate of authority under this  
15 chapter, an applicant must demonstrate to the satisfaction of the  
16 commissioner that:

17 (1) the applicant's business ability, experience,  
18 character, financial condition, and general fitness warrant the  
19 public's confidence;

20 (2) the cemetery operations manager has at least two  
21 years of experience in cemetery management;

22 (3) the issuance of the certificate of authority is in  
23 the public interest;

24 (4) the applicant, a principal of the applicant, or a  
25 person who controls the applicant does not owe the department a  
26 delinquent fee, assessment, administrative penalty, or other  
27 amount imposed under this chapter or a rule adopted or order issued

1 under this chapter; and

2 (5) the applicant corporation:

3 (A) is in good standing and statutory compliance  
4 with this state;

5 (B) is authorized to engage in the perpetual care  
6 cemetery business in this state; and

7 (C) does not owe any delinquent franchise or  
8 other taxes to this state.

9 Sec. 712.0035. ISSUANCE OF CERTIFICATE OF AUTHORITY.

10 (a) The commissioner shall issue a certificate of authority if the  
11 commissioner finds that:

12 (1) the applicant meets the qualifications listed in  
13 Section 712.0034 and it is reasonable to believe that the  
14 applicant's cemetery business will be conducted fairly and  
15 lawfully, according to applicable state and federal law, and in a  
16 manner commanding the public's trust and confidence;

17 (2) the issuance of the certificate of authority is in  
18 the public interest;

19 (3) the documentation and forms required to be  
20 submitted by the applicant are acceptable; and

21 (4) the applicant has satisfied all requirements for  
22 issuance of a certificate of authority.

23 (b) The applicant is entitled, on request, to a hearing on a  
24 denial of the application. The request must be filed with the  
25 commissioner not later than the 30th day after the date the notice  
26 of denial is mailed. The hearing must be held not later than the  
27 60th day after the date of the request unless the administrative law



1 judge extends the period for good cause or the parties agree to a  
2 later hearing date. The hearing is a contested case under Chapter  
3 2001, Government Code.

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

8 Sec. 712.0037. RENEWAL OF CERTIFICATE OF AUTHORITY.

9 (a) As a condition of renewal, a certificate holder must meet the  
10 qualifications and satisfy the requirements that apply to an  
11 applicant for a new certificate of authority. Additionally, not  
12 later than the certificate's annual renewal date, a certificate  
13 holder shall:

14 (1) pay an annual renewal fee in an amount established  
15 by Finance Commission of Texas rule; and

16 (2) submit a renewal report under oath and in the form  
17 and medium required by the commissioner that demonstrates that the  
18 certificate holder meets the qualifications and requirements for  
19 holding a certificate.

20 (b) If the department does not receive a certificate  
21 holder's renewal fee and complete renewal report on or before the  
22 certificate's renewal date, the commissioner:

23 (1) shall notify the certificate holder in writing  
24 that the certificate holder must submit the renewal report and pay  
25 the renewal fee not later than the 30th day after the certificate's  
26 renewal date; and

27 (2) may require the certificate holder to pay a late

1 fee, in an amount established by Finance Commission of Texas rule  
2 and not subject to appeal, for each business day after the  
3 certificate's renewal date that the commissioner does not receive  
4 the completed renewal report and renewal fee.

5 (c) On timely receipt of a certificate holder's complete  
6 renewal report and renewal fee and any late fee, the department  
7 shall review the report and the commissioner may:

8 (1) renew the certificate of authority; or

9 (2) refuse to renew the certificate of authority and  
10 take other action the commissioner considers appropriate.

11 (d) The applicant on request is entitled to a hearing to  
12 contest the commissioner's refusal to renew the certificate. The  
13 request must be filed with the commissioner not later than the 30th  
14 day after the date the notice of refusal to renew is mailed. The  
15 hearing is a contested case under Chapter 2001, Government Code.

16 (e) The holder or principal of or the person in control of  
17 the holder of an expired certificate of authority, or the holder or  
18 principal of or person in control of the holder of a certificate of  
19 authority surrendered under Section 712.00395, who wishes to  
20 conduct activities for which a certificate of authority is required  
21 under this chapter shall file a new application for a certificate of  
22 authority and satisfy all requirements for the certificate that  
23 apply at the time the new application is filed.

24 Sec. 712.0038. TRANSFER OR ASSIGNMENT PROHIBITED. A  
25 certificate of authority issued under this chapter may not be  
26 transferred or assigned.

27 Sec. 712.0039. TRANSFER OF BUSINESS OWNERSHIP; CHANGE OF

1 CONTROL. (a) A certificate holder shall notify the department in  
2 writing of a transfer of ownership of the certificate holder's  
3 business or a transfer of 25 percent or more of the stock or other  
4 ownership or membership interest of the corporation as follows:

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

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

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

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

21 Sec. 712.00395. SURRENDER OF CERTIFICATE OF AUTHORITY; FEE.

22 (a) A certificate holder may apply to the commissioner for  
23 permission to surrender the certificate of authority if the holder:

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

27 (2) has performed not more than 10 burials per year

1 during each of the last five years;

2 (3) is not larger than 10 acres; and

3 (4) has a perpetual care fund that is less than  
4 \$30,000.

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

8 (c) The certificate holder shall publish a notice of  
9 intention to surrender a certificate of authority to operate a  
10 perpetual care cemetery one time in a newspaper of general  
11 circulation in each county in which the cemetery is located. The  
12 notice must:

13 (1) be in the form and include the information  
14 required by the banking commissioner;

15 (2) state that:

16 (A) the certificate holder is applying to  
17 surrender the holder's certificate of authority to operate a  
18 perpetual care cemetery;

19 (B) a cemetery plot owner or cemetery plot  
20 owner's heir may request a hearing to contest the surrender; and

21 (C) a request for a hearing must be filed with the  
22 department not later than the 14th day after the date the notice is  
23 published.

24 (d) The certificate holder shall submit, not later than the  
25 seventh day after the date the notice is published, a publisher's  
26 affidavit evidencing publication of the notice.

27 (e) If a request for hearing is timely filed by a plot owner

1 or plot owner's heir, the commissioner shall hold a hearing in  
2 accordance with Chapter 2001, Government Code.

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

6 (g) If an application is denied, and if a hearing is not held  
7 before the denial, the applicant may request a hearing to appeal the  
8 denial of the application. The applicant's request for a hearing  
9 must be filed with the commissioner not later than the 30th day  
10 after the date the notice of denial is mailed. The hearing is a  
11 contested case under Chapter 2001, Government Code.

12 (h) An order approving the surrender of a certificate of  
13 authority must impose four conditions that are not subject to  
14 objection. Failure to satisfy any of these conditions constitutes  
15 a violation of the commissioner's order, and the certificate holder  
16 is subject to an enforcement action under this chapter. The order  
17 approving the surrender must:

18 (1) require the perpetual care fund to remain in an  
19 irrevocable trust, with the income to be used for perpetual care of  
20 the cemetery in general and for those plots that were purchased  
21 before the certificate was surrendered;

22 (2) require that the cemetery remove any signage or  
23 other announcement stating that the cemetery is a perpetual care  
24 cemetery;

25 (3) require each contract and other evidence of  
26 ownership entered into after the date of the order to clearly state  
27 that the cemetery is not regulated by the Texas Department of

1 Banking and may not use the term "perpetual care cemetery"; and

2 (4) state the location of cemetery records and require  
3 the cemetery to:

4 (A) retain existing records regarding the  
5 perpetual care fund for five years after the date of the order; and

6 (B) continue to comply with all recordkeeping  
7 requirements of Chapter 711.

8 (i) Not later than the 10th day after the date an order  
9 approving the surrender of a certificate of authority is signed,  
10 the certificate holder shall deliver the original certificate of  
11 authority to the commissioner along with a written notice of  
12 surrender that includes the location of the certificate holder's  
13 records and the name, address, telephone number, and other contact  
14 information for an individual who is authorized to provide access  
15 to the records.

16 (j) The surrender of a certificate of authority does not  
17 reduce or eliminate a certificate holder's administrative, civil,  
18 or criminal liability arising from any acts or omissions that occur  
19 before the surrender of the certificate.

20 SECTION 9. Section 712.022, Health and Safety Code, is  
21 amended to read as follows:

22 Sec. 712.022. OPERATION OF PERPETUAL CARE CEMETERY. A  
23 corporation authorized by law to operate a perpetual care cemetery  
24 but not doing so may do so if the corporation:

25 (1) complies with the requirements of this chapter for  
26 obtaining a certificate of authority [~~notifies the commissioner~~];  
27 and

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

3                   (A) the amount that would have been paid into the  
4 fund if the cemetery operated as a perpetual care cemetery from the  
5 date of the cemetery's first sale of plots; or

6                   (B) the minimum amount provided by Section  
7 712.004.

8           SECTION 10. Subsection (a), Section 712.044, Health and  
9 Safety Code, is amended to read as follows:

10           (a) The commissioner may examine on a periodic basis[~~r~~  
11 ~~annually or more often~~] as the commissioner reasonably considers  
12 necessary or appropriate to protect the interest of plot owners and  
13 efficiently administer and enforce this chapter:

14                   (1) the books and records of a corporation relating to  
15 its fund, including deposits to or withdrawals from the fund,  
16 income of the fund, and uses and expenditures of that income;

17                   (2) the books and records of a corporation relating to  
18 sales of undeveloped mausoleum spaces and any preconstruction trust  
19 established by the corporation as provided by Section 712.063,  
20 including deposits to or withdrawals from the preconstruction  
21 trust, income of the preconstruction trust, and uses and  
22 expenditures of principal and income of the preconstruction trust;  
23 and

24                   (3) the consumer complaint files of a corporation  
25 relating to the fund, sales of undeveloped mausoleum spaces, a  
26 preconstruction trust, or to discharge of the corporation's  
27 perpetual care responsibilities, minutes of the corporation's

1 board of directors, cemetery dedication statements and plat maps,  
2 and mausoleum and lawn crypt construction contracts and  
3 specifications.

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

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

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

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

25 (a) If, after a hearing conducted as provided by Chapter  
26 2001, Government Code, the trier of fact finds that a violation of  
27 this chapter or a rule of the Finance Commission of Texas



1 establishes a pattern of wilful disregard for the requirements of  
2 this chapter or rules of the finance commission, the trier of fact  
3 may [~~shall~~] recommend to the commissioner that the maximum  
4 administrative penalty permitted under Section 712.0441 be imposed  
5 on the person committing the violation or that the commissioner  
6 cancel or not renew the corporation's certificate of authority  
7 [~~person's permit~~] under this chapter [~~Chapter 154, Finance Code,~~]  
8 if the person holds such a certificate [~~permit~~].

9 SECTION 13. Subchapter C, Chapter 712, Health and Safety  
10 Code, is amended by adding Sections 712.0443, 712.0444, and  
11 712.0445 to read as follows:

12 Sec. 712.0443. CEASE AND DESIST ORDER. (a) The  
13 commissioner may issue an order to cease and desist to a person if:

14 (1) the commissioner finds by examination or other  
15 credible evidence that the person has violated a law of this state  
16 relating to perpetual care cemeteries, including a violation of  
17 this chapter, the commissioner's final order, or a Finance  
18 Commission of Texas rule; and

19 (2) the violation was not corrected by the 31st day  
20 after the date the person receives written notice of the violation  
21 from the department.

22 (b) An order proposed under this section shall be served on  
23 the person and must state the grounds for the proposed order with  
24 reasonable certainty and the proposed effective date, which may not  
25 be less than the 20th day after the date the order is mailed or  
26 delivered. The order becomes effective on the proposed date unless  
27 the person requests a hearing not later than the 19th day after the

1 date the order is mailed or delivered. If the person requests a  
2 hearing, the hearing shall be conducted in accordance with the  
3 procedures for a contested case hearing under Chapter 2001,  
4 Government Code.

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

10 (b) An emergency order remains in effect unless stayed by  
11 the commissioner.

12 (c) The person named in the emergency order may request in  
13 writing, not later than the 18th day after the date the order is  
14 mailed, a hearing to show that the emergency order should be stayed.  
15 On receipt of the request, the commissioner shall set a time for the  
16 hearing not later than the 21st day after the date the commissioner  
17 received the request, unless extended at the request of the person  
18 named in the order.

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

21 Sec. 712.0445. RECEIVERSHIP PROCEEDINGS. (a) In  
22 conjunction with a proceeding to forfeit the right to do business in  
23 this state brought by the attorney general, the attorney general  
24 may seek the appointment of a receiver. This remedy is in addition  
25 to other grounds for the appointment of a receiver.

26 (b) If the receiver is a private party, the receiver shall  
27 be compensated from the corporation or, if the corporation has no

1 assets available to pay the receiver, from the income only of the  
2 perpetual care fund. The receiver may not invade the principal of  
3 the fund.

4 (c) The court may appoint a department employee as receiver.  
5 If the receiver is a department employee, the employee may not  
6 receive compensation for serving as receiver in addition to the  
7 employee's regular salary. The department may receive  
8 reimbursement from the corporation for the travel expenses and the  
9 fully allocated personnel costs associated with the employee's  
10 service as receiver.

11 (d) A department employee serving as receiver is not  
12 personally liable for damages arising from the employee's official  
13 act or omission unless the act or omission is corrupt or malicious.  
14 The attorney general shall defend an action brought against an  
15 employee serving as receiver because of an official act or omission  
16 as receiver regardless of whether the employee has terminated  
17 service with the department before the action commences.

18 SECTION 14. Section 712.048, Health and Safety Code, is  
19 amended by adding Subsection (c) to read as follows:

20 (c) A person commits an offense if the person collects money  
21 for the purchase of a memorial, as defined by Section 711.001, and  
22 knowingly defalcates or misappropriates the funds. An offense  
23 under this subsection is punishable as if it were an offense under  
24 Section 32.45, Penal Code. This subsection does not prevent an  
25 aggrieved party or the attorney general from maintaining a civil  
26 action for the recovery of damages, or the commissioner from  
27 maintaining an administrative action for restitution, caused by an

1 injury resulting from an offense under this subsection.

2 SECTION 15. Sections 711.062 and 712.0031 and Subsection  
3 (e), Section 712.0441, Health and Safety Code, are repealed.

4 SECTION 16. A person who owns and operates a perpetual care  
5 cemetery on September 1, 2011, that on that date complies with  
6 Sections 712.003 and 712.0031, Health and Safety Code, as those  
7 sections existed before amendment or repeal by this Act, is  
8 automatically granted a certificate of authority. The certificate  
9 of authority expires March 1, 2012, unless the certificate holder  
10 renews the certificate in accordance with Section 712.0037, Health  
11 and Safety Code, as added by this Act.

12 SECTION 17. This Act takes effect September 1, 2011.