

1-1 By: Carona S.B. No. 1167
1-2 (In the Senate - Filed March 16, 2011; March 16, 2011, read
1-3 first time and referred to Committee on Health and Human Services;
1-4 March 17, 2011, rereferred to Committee on Business and Commerce;
1-5 March 24, 2011, reported adversely, with favorable Committee
1-6 Substitute by the following vote: Yeas 9, Nays 0; March 24, 2011,
1-7 sent to printer.)

1-8 COMMITTEE SUBSTITUTE FOR S.B. No. 1167 By: Carona

1-9 A BILL TO BE ENTITLED
1-10 AN ACT

1-11 relating to cemeteries and perpetual care cemetery corporations;
1-12 providing a penalty.

1-13 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-14 SECTION 1. Subdivision (3), Section 711.001, Health and
1-15 Safety Code, is amended to read as follows:

1-16 (3) "Cemetery organization" means:

1-17 (A) an unincorporated association of plot owners
1-18 not operated for profit that is authorized by its articles of
1-19 association to conduct a business for cemetery purposes; or

1-20 (B) a corporation, as defined by Section
1-21 712.001(b)(3) [either for profit or not for profit], that is
1-22 authorized by its certificate of formation or its registration
1-23 [articles of incorporation] to conduct a business for cemetery
1-24 purposes.

1-25 SECTION 2. Section 711.002, Health and Safety Code, is
1-26 amended by adding Subsection (a-1) to read as follows:

1-27 (a-1) If the person with the right to control the
1-28 disposition of the decedent's remains fails to make final
1-29 arrangements or appoint another person to make final arrangements
1-30 for the disposition before the earlier of the 6th day after the date
1-31 the person received notice of the decedent's death or the 10th day
1-32 after the date the decedent died, the person is presumed to be
1-33 unable or unwilling to control the disposition, and:

1-34 (1) the person's right to control the disposition is
1-35 terminated; and

1-36 (2) the right to control the disposition is passed to
1-37 the following persons in the following priority:

1-38 (A) any other person in the same priority class
1-39 under Subsection (a) as the person whose right was terminated; or

1-40 (B) a person in a different priority class, in
1-41 the priority listed in Subsection (a).

1-42 SECTION 3. Section 711.061, Health and Safety Code, is
1-43 amended to read as follows:

1-44 Sec. 711.061. REQUIREMENTS FOR LAWN CRYPTS. (a) A lawn
1-45 crypt may not be installed unless:

1-46 (1) the lawn crypt is constructed of concrete and
1-47 reinforced steel or other comparably durable material;

1-48 (2) the lawn crypt is installed on not less than six
1-49 inches of rock, gravel, or other drainage material;

1-50 (3) the lawn crypt provides a method to drain water out
1-51 of the lawn crypt;

1-52 (4) the outside top surface of the lawn crypt at the
1-53 time of installation is at least 1-1/2 feet below the surface of the
1-54 ground as required by Section 714.001(a)(2) and is capable of
1-55 withstanding the weight of the soil and sod above the top surface
1-56 and the weight of machinery and equipment normally used in the
1-57 maintenance of the cemetery;

1-58 (5) the lawn crypt is installed in a garden or other
1-59 section of the cemetery that has been dedicated for lawn crypt
1-60 interment purposes in accordance with Section 711.034; and

1-61 (6) ~~[except as provided by Section 711.062,]~~ the lawn
1-62 crypt is installed in multiple units of 10 or more or as prescribed
1-63 by Subsection (b).

2-1 (b) A lawn crypt that is part of a private estate may be
2-2 installed in fewer than 10 units. For purposes of this subsection,
2-3 a private estate is a small section of a cemetery that has the
2-4 following characteristics:

- 2-5 (1) is sold under a single contract;
- 2-6 (2) is usually offset from other burial sites;
- 2-7 (3) allows for interment of several members of the
2-8 same family or their designees; and
- 2-9 (4) is identified on the plat for cemetery property as
2-10 a private estate in accordance with Section 711.034.

2-11 SECTION 4. Subchapter E, Chapter 711, Health and Safety
2-12 Code, is amended by adding Sections 711.063 and 711.064 to read as
2-13 follows:

2-14 Sec. 711.063. CONSTRUCTION; DEFAULT. (a) A cemetery in
2-15 which undeveloped lawn crypt spaces are being sold or reserved for
2-16 sale shall begin construction on the lawn crypt section not later
2-17 than 48 months after the date of the first sale or reservation,
2-18 whichever is earlier, and must complete construction not later than
2-19 60 months after the date of the first sale or reservation, whichever
2-20 is earlier.

2-21 (b) If construction of a lawn crypt section described by
2-22 Subsection (a) does not begin or has not been completed by the dates
2-23 specified in Subsection (a), on the buyer's written request, the
2-24 cemetery shall refund the entire amount paid for the undeveloped
2-25 lawn crypt space not later than the 30th day after the date of the
2-26 buyer's request.

2-27 Sec. 711.064. CONTRACT DISCLOSURES. (a) A sales contract
2-28 for an undeveloped lawn crypt space must contain terms, whether in
2-29 English or Spanish, that inform the buyer:

2-30 (1) that the buyer may, after providing written
2-31 notice, cancel the contract for failure by the cemetery or
2-32 contractor to construct the lawn crypt space within the time limits
2-33 specified by Section 711.063(a) and receive a refund of the entire
2-34 amount paid under the contract for the undeveloped lawn crypt space
2-35 as described by Section 711.063(b); and

2-36 (2) of the options available under a fully paid
2-37 contract if the person to be interred in the undeveloped lawn crypt
2-38 space dies before completion of the related lawn crypt section,
2-39 including the option to:

2-40 (A) select a replacement lawn crypt space or
2-41 other interment acceptable to the buyer or the buyer's
2-42 representative;

2-43 (B) elect temporary interment of the human
2-44 remains or cremated remains in an existing mausoleum space until
2-45 the undeveloped lawn crypt space is completed, at which time the
2-46 cemetery shall disinter and reinter the human remains or cremated
2-47 remains at no additional charge to the buyer; or

2-48 (C) cancel the contract on written notice of the
2-49 buyer or the buyer's representative and receive a refund of the
2-50 entire amount paid under the contract for the undeveloped lawn
2-51 crypt space if:

2-52 (i) the cemetery does not offer a temporary
2-53 interment option; or

2-54 (ii) the buyer or the buyer's
2-55 representative does not accept a replacement lawn crypt or other
2-56 interment.

2-57 (b) A sales contract for undeveloped lawn crypt space must
2-58 comply with applicable regulations of the Federal Trade Commission,
2-59 including 16 C.F.R. Section 433.2, with respect to a contract
2-60 payable in installments.

2-61 (c) Each notice required by this section must be written in
2-62 plain language designed to be easily understood by the average
2-63 consumer and must be printed in an easily readable font and type
2-64 size.

2-65 SECTION 5. Subdivision (3), Subsection (b), Section
2-66 712.001, Health and Safety Code, is amended to read as follows:

2-67 (3) "Corporation" means a filing entity or foreign
2-68 filing entity, as those terms are defined by Section 1.002,
2-69 Business Organizations Code, or an entity [~~corporation~~] that is

3-1 organized under this chapter, or any corresponding statute in
3-2 effect before September 1, 1993, to operate one or more perpetual
3-3 care cemeteries in this state.

3-4 SECTION 6. The heading to Section 712.003, Health and
3-5 Safety Code, is amended to read as follows:

3-6 Sec. 712.003. REGISTRATION [~~INCORPORATION~~] REQUIRED;
3-7 MINIMUM CAPITAL.

3-8 SECTION 7. Subsection (a), Section 712.003, Health and
3-9 Safety Code, is amended to read as follows:

3-10 (a) A perpetual care cemetery may not be operated in this
3-11 state unless a certificate of formation for a domestic filing
3-12 entity or registration to transact business for a foreign filing
3-13 entity is [~~articles of incorporation are~~] filed with the secretary
3-14 of state showing:

3-15 (1) subscriptions and payments in cash for 100 percent
3-16 of the entity's ownership or membership interests [~~the~~
3-17 ~~corporation's full capital stock~~];

3-18 (2) the location of its perpetual care cemetery; and

3-19 (3) a certificate showing the deposit in its fund of
3-20 the minimum amount required under Section 712.004.

3-21 SECTION 8. Subchapter A, Chapter 712, Health and Safety
3-22 Code, is amended by adding Sections 712.0032 through 712.0039 and
3-23 Section 712.00395 to read as follows:

3-24 Sec. 712.0032. CERTIFICATE OF AUTHORITY REQUIREMENT. A
3-25 corporation must hold a certificate of authority issued under this
3-26 chapter to operate a perpetual care cemetery.

3-27 Sec. 712.0033. CERTIFICATE OF AUTHORITY APPLICATION; FEES.

3-28 (a) To obtain a certificate of authority to operate a perpetual
3-29 care cemetery, an applicant must, not later than the 30th day after
3-30 the date a corporation files its certificate of formation or
3-31 application for registration with the secretary of state:

3-32 (1) file an application, made under oath, on a form
3-33 prescribed by the department; and

3-34 (2) pay a filing fee in an amount set by the Finance
3-35 Commission of Texas under Section 712.008.

3-36 (b) If the corporation fails to comply with Subsection (a),
3-37 the commissioner may instruct the secretary of state to remove the
3-38 corporation from the secretary's active records or cancel the
3-39 corporation's registration. On an instruction from the
3-40 commissioner under this subsection, the secretary of state shall
3-41 remove the corporation from the secretary's active records or
3-42 cancel the corporation's registration and serve notice of the
3-43 cancellation on the corporation by registered or certified letter,
3-44 addressed to the corporation's address.

3-45 (c) A fee or cost paid under this chapter in connection with
3-46 an application or renewal is not refundable.

3-47 Sec. 712.0034. QUALIFICATIONS FOR CERTIFICATE OF
3-48 AUTHORITY; INVESTIGATION. (a) The commissioner may investigate
3-49 an applicant before issuing a certificate of authority.

3-50 (b) To qualify for a certificate of authority under this
3-51 chapter, an applicant must demonstrate to the satisfaction of the
3-52 commissioner that:

3-53 (1) the applicant's business ability, experience,
3-54 character, financial condition, and general fitness warrant the
3-55 public's confidence;

3-56 (2) the cemetery operations manager has at least two
3-57 years of experience in cemetery management;

3-58 (3) the issuance of the certificate of authority is in
3-59 the public interest;

3-60 (4) the applicant, a principal of the applicant, or a
3-61 person who controls the applicant does not owe the department a
3-62 delinquent fee, assessment, administrative penalty, or other
3-63 amount imposed under this chapter or a rule adopted or order issued
3-64 under this chapter; and

3-65 (5) the applicant corporation:

3-66 (A) is in good standing and statutory compliance
3-67 with this state;

3-68 (B) is authorized to engage in the perpetual care
3-69 cemetery business in this state; and

4-1 (C) does not owe any delinquent franchise or
4-2 other taxes to this state.

4-3 Sec. 712.0035. ISSUANCE OF CERTIFICATE OF AUTHORITY.

4-4 (a) The commissioner shall issue a certificate of authority if the
4-5 commissioner finds that:

4-6 (1) the applicant meets the qualifications listed in
4-7 Section 712.0034 and it is reasonable to believe that the
4-8 applicant's cemetery business will be conducted fairly and
4-9 lawfully, according to applicable state and federal law, and in a
4-10 manner commanding the public's trust and confidence;

4-11 (2) the issuance of the certificate of authority is in
4-12 the public interest;

4-13 (3) the documentation and forms required to be
4-14 submitted by the applicant are acceptable; and

4-15 (4) the applicant has satisfied all requirements for
4-16 issuance of a certificate of authority.

4-17 (b) The applicant is entitled, on request, to a hearing on a
4-18 denial of the application. The request must be filed with the
4-19 commissioner not later than the 30th day after the date the notice
4-20 of denial is mailed. The hearing must be held not later than the
4-21 60th day after the date of the request unless the administrative law
4-22 judge extends the period for good cause or the parties agree to a
4-23 later hearing date. The hearing is a contested case under Chapter
4-24 2001, Government Code.

4-25 Sec. 712.0036. TERM OF CERTIFICATE OF AUTHORITY. An
4-26 initial certificate of authority expires March 1 of the year after
4-27 the year the certificate is issued. The certificate must be renewed
4-28 at that time and by March 1 of each following year.

4-29 Sec. 712.0037. RENEWAL OF CERTIFICATE OF AUTHORITY.

4-30 (a) As a condition of renewal, a certificate holder must meet the
4-31 qualifications and satisfy the requirements that apply to an
4-32 applicant for a new certificate of authority. Additionally, not
4-33 later than the certificate's annual renewal date, a certificate
4-34 holder shall:

4-35 (1) pay an annual renewal fee in an amount established
4-36 by Finance Commission of Texas rule; and

4-37 (2) submit a renewal report under oath and in the form
4-38 and medium required by the commissioner that demonstrates that the
4-39 certificate holder meets the qualifications and requirements for
4-40 holding a certificate.

4-41 (b) If the department does not receive a certificate
4-42 holder's renewal fee and complete renewal report on or before the
4-43 certificate's renewal date, the commissioner:

4-44 (1) shall notify the certificate holder in writing
4-45 that the certificate holder must submit the renewal report and pay
4-46 the renewal fee not later than the 30th day after the certificate's
4-47 renewal date; and

4-48 (2) may require the certificate holder to pay a late
4-49 fee, in an amount established by Finance Commission of Texas rule
4-50 and not subject to appeal, for each business day after the
4-51 certificate's renewal date that the commissioner does not receive
4-52 the completed renewal report and renewal fee.

4-53 (c) On timely receipt of a certificate holder's complete
4-54 renewal report and renewal fee and any late fee, the department
4-55 shall review the report and the commissioner may:

4-56 (1) renew the certificate of authority; or

4-57 (2) refuse to renew the certificate of authority and
4-58 take other action the commissioner considers appropriate.

4-59 (d) The applicant on request is entitled to a hearing to
4-60 contest the commissioner's refusal to renew the certificate. The
4-61 request must be filed with the commissioner not later than the 30th
4-62 day after the date the notice of refusal to renew is mailed. The
4-63 hearing is a contested case under Chapter 2001, Government Code.

4-64 (e) The holder or principal of or the person in control of
4-65 the holder of an expired certificate of authority, or the holder or
4-66 principal of or person in control of the holder of a certificate of
4-67 authority surrendered under Section 712.00395, who wishes to
4-68 conduct activities for which a certificate of authority is required
4-69 under this chapter shall file a new application for a certificate of

5-1 authority and satisfy all requirements for the certificate that
5-2 apply at the time the new application is filed.

5-3 Sec. 712.0038. TRANSFER OR ASSIGNMENT PROHIBITED. A
5-4 certificate of authority issued under this chapter may not be
5-5 transferred or assigned.

5-6 Sec. 712.0039. TRANSFER OF BUSINESS OWNERSHIP; CHANGE OF
5-7 CONTROL. (a) A certificate holder shall notify the department in
5-8 writing of a transfer of ownership of the certificate holder's
5-9 business or a transfer of 25 percent or more of the stock or other
5-10 ownership or membership interest of the corporation as follows:

5-11 (1) in the case of a voluntary transfer, not later than
5-12 the seventh day after the date the contract for transfer is
5-13 executed; and

5-14 (2) in the case of an involuntary transfer, not later
5-15 than one business day after receiving notice of the impending
5-16 foreclosure or other involuntary transfer.

5-17 (b) If the proposed transferee is not a certificate holder,
5-18 the proposed transferee shall file any necessary documents with the
5-19 secretary of state and an application for a certificate of
5-20 authority with the department as required by this chapter. The
5-21 transfer of the perpetual care fund may not occur until after the
5-22 date a certificate of authority is issued to the transferee
5-23 applicant.

5-24 (c) If the commissioner denies the application, a hearing
5-25 may be requested and conducted according to the procedures in
5-26 Section 712.0035(b).

5-27 Sec. 712.00395. SURRENDER OF CERTIFICATE OF AUTHORITY; FEE.

5-28 (a) A certificate holder may apply to the commissioner for
5-29 permission to surrender the certificate of authority if the holder:

5-30 (1) is a cemetery that qualified for an exemption
5-31 under Section 711.021(g), but voluntarily elected to become a
5-32 perpetual care cemetery;

5-33 (2) has performed not more than 10 burials per year
5-34 during each of the last five years;

5-35 (3) is not larger than 10 acres; and

5-36 (4) has a perpetual care fund that is less than
5-37 \$30,000.

5-38 (b) The application for permission to surrender a
5-39 certificate of authority must be sworn to and be on a form
5-40 prescribed by the department.

5-41 (c) The certificate holder shall publish a notice of
5-42 intention to surrender a certificate of authority to operate a
5-43 perpetual care cemetery one time in a newspaper of general
5-44 circulation in each county in which the cemetery is located. The
5-45 notice must:

5-46 (1) be in the form and include the information
5-47 required by the banking commissioner;

5-48 (2) state that:

5-49 (A) the certificate holder is applying to
5-50 surrender the holder's certificate of authority to operate a
5-51 perpetual care cemetery;

5-52 (B) a cemetery plot owner or cemetery plot
5-53 owner's heir may request a hearing to contest the surrender; and

5-54 (C) a request for a hearing must be filed with the
5-55 department not later than the 14th day after the date the notice is
5-56 published.

5-57 (d) The certificate holder shall submit, not later than the
5-58 seventh day after the date the notice is published, a publisher's
5-59 affidavit evidencing publication of the notice.

5-60 (e) If a request for hearing is timely filed by a plot owner
5-61 or plot owner's heir, the commissioner shall hold a hearing in
5-62 accordance with Chapter 2001, Government Code.

5-63 (f) If a request for a hearing is not timely filed by a plot
5-64 owner or plot owner's heir, the commissioner may approve or deny the
5-65 application.

5-66 (g) If an application is denied, and if a hearing is not held
5-67 before the denial, the applicant may request a hearing to appeal the
5-68 denial of the application. The applicant's request for a hearing
5-69 must be filed with the commissioner not later than the 30th day

6-1 after the date the notice of denial is mailed. The hearing is a
6-2 contested case under Chapter 2001, Government Code.

6-3 (h) An order approving the surrender of a certificate of
6-4 authority must impose four conditions that are not subject to
6-5 objection. Failure to satisfy any of these conditions constitutes
6-6 a violation of the commissioner's order, and the certificate holder
6-7 is subject to an enforcement action under this chapter. The order
6-8 approving the surrender must:

6-9 (1) require the perpetual care fund to remain in an
6-10 irrevocable trust, with the income to be used for perpetual care of
6-11 the cemetery in general and for those plots that were purchased
6-12 before the certificate was surrendered;

6-13 (2) require that the cemetery remove any signage or
6-14 other announcement stating that the cemetery is a perpetual care
6-15 cemetery;

6-16 (3) require each contract and other evidence of
6-17 ownership entered into after the date of the order to clearly state
6-18 that the cemetery is not regulated by the Texas Department of
6-19 Banking and may not use the term "perpetual care cemetery"; and

6-20 (4) state the location of cemetery records and require
6-21 the cemetery to:

6-22 (A) retain existing records regarding the
6-23 perpetual care fund for five years after the date of the order; and

6-24 (B) continue to comply with all recordkeeping
6-25 requirements of Chapter 711.

6-26 (i) Not later than the 10th day after the date an order
6-27 approving the surrender of a certificate of authority is signed,
6-28 the certificate holder shall deliver the original certificate of
6-29 authority to the commissioner along with a written notice of
6-30 surrender that includes the location of the certificate holder's
6-31 records and the name, address, telephone number, and other contact
6-32 information for an individual who is authorized to provide access
6-33 to the records.

6-34 (j) The surrender of a certificate of authority does not
6-35 reduce or eliminate a certificate holder's administrative, civil,
6-36 or criminal liability arising from any acts or omissions that occur
6-37 before the surrender of the certificate.

6-38 SECTION 9. Section 712.022, Health and Safety Code, is
6-39 amended to read as follows:

6-40 Sec. 712.022. OPERATION OF PERPETUAL CARE CEMETERY. A
6-41 corporation authorized by law to operate a perpetual care cemetery
6-42 but not doing so may do so if the corporation:

6-43 (1) complies with the requirements of this chapter for
6-44 obtaining a certificate of authority [~~notifies the commissioner~~];
6-45 and

6-46 (2) establishes a fund as provided by Section 712.021
6-47 in an amount equal to the larger of:

6-48 (A) the amount that would have been paid into the
6-49 fund if the cemetery operated as a perpetual care cemetery from the
6-50 date of the cemetery's first sale of plots; or

6-51 (B) the minimum amount provided by Section
6-52 712.004.

6-53 SECTION 10. Subsection (a), Section 712.044, Health and
6-54 Safety Code, is amended to read as follows:

6-55 (a) The commissioner may examine on a periodic basis[~~7~~
6-56 ~~annually or more often~~] as the commissioner reasonably considers
6-57 necessary or appropriate to protect the interest of plot owners and
6-58 efficiently administer and enforce this chapter:

6-59 (1) the books and records of a corporation relating to
6-60 its fund, including deposits to or withdrawals from the fund,
6-61 income of the fund, and uses and expenditures of that income;

6-62 (2) the books and records of a corporation relating to
6-63 sales of undeveloped mausoleum spaces and any preconstruction trust
6-64 established by the corporation as provided by Section 712.063,
6-65 including deposits to or withdrawals from the preconstruction
6-66 trust, income of the preconstruction trust, and uses and
6-67 expenditures of principal and income of the preconstruction trust;
6-68 and

6-69 (3) the consumer complaint files of a corporation

7-1 relating to the fund, sales of undeveloped mausoleum spaces, a
7-2 preconstruction trust, or to discharge of the corporation's
7-3 perpetual care responsibilities, minutes of the corporation's
7-4 board of directors, cemetery dedication statements and plat maps,
7-5 and mausoleum and lawn crypt construction contracts and
7-6 specifications.

7-7 SECTION 11. Section 712.0441, Health and Safety Code, is
7-8 amended by amending Subsection (f) and adding Subsection (f-1) to
7-9 read as follows:

7-10 (f) The commissioner may issue an order requiring
7-11 restitution by a person [~~corporation~~] to the cemetery's [~~its~~] fund
7-12 or to a preconstruction trust if, after notice and opportunity for
7-13 hearing held in accordance with the procedures for a contested case
7-14 hearing under Chapter 2001, Government Code [~~the Administrative~~
7-15 ~~Procedure and Texas Register Act~~], the commissioner finds that the
7-16 corporation has not made a deposit in the fund as required by
7-17 Section 712.028 or in the preconstruction trust as required by
7-18 Section 712.063.

7-19 (f-1) The commissioner may issue an order requiring
7-20 restitution by a person if, after notice and opportunity for a
7-21 hearing held in accordance with the procedures for a contested case
7-22 hearing under Chapter 2001, Government Code, the commissioner finds
7-23 that the corporation has not ordered memorials, as defined by
7-24 Section 711.001(20-a), in compliance with the deadlines
7-25 established by rules adopted under this chapter.

7-26 SECTION 12. Subsection (a), Section 712.0442, Health and
7-27 Safety Code, is amended to read as follows:

7-28 (a) If, after a hearing conducted as provided by Chapter
7-29 2001, Government Code, the trier of fact finds that a violation of
7-30 this chapter or a rule of the Finance Commission of Texas
7-31 establishes a pattern of wilful disregard for the requirements of
7-32 this chapter or rules of the finance commission, the trier of fact
7-33 may [~~shall~~] recommend to the commissioner that the maximum
7-34 administrative penalty permitted under Section 712.0441 be imposed
7-35 on the person committing the violation or that the commissioner
7-36 cancel or not renew the corporation's certificate of authority
7-37 [~~person's permit~~] under this chapter [~~Chapter 154, Finance Code,~~]
7-38 if the person holds such a certificate [~~permit~~].

7-39 SECTION 13. Subchapter C, Chapter 712, Health and Safety
7-40 Code, is amended by adding Sections 712.0443, 712.0444, and
7-41 712.0445 to read as follows:

7-42 Sec. 712.0443. CEASE AND DESIST ORDER. (a) The
7-43 commissioner may issue an order to cease and desist to a person if:

7-44 (1) the commissioner finds by examination or other
7-45 credible evidence that the person has violated a law of this state
7-46 relating to perpetual care cemeteries, including a violation of
7-47 this chapter, the commissioner's final order, or a Finance
7-48 Commission of Texas rule; and

7-49 (2) the violation was not corrected by the 31st day
7-50 after the date the person receives written notice of the violation
7-51 from the department.

7-52 (b) An order proposed under this section shall be served on
7-53 the person and must state the grounds for the proposed order with
7-54 reasonable certainty and the proposed effective date, which may not
7-55 be less than the 20th day after the date the order is mailed or
7-56 delivered. The order becomes effective on the proposed date unless
7-57 the person requests a hearing not later than the 19th day after the
7-58 date the order is mailed or delivered. If the person requests a
7-59 hearing, the hearing shall be conducted in accordance with the
7-60 procedures for a contested case hearing under Chapter 2001,
7-61 Government Code.

7-62 Sec. 712.0444. EMERGENCY ORDER. (a) The commissioner may
7-63 issue an emergency order that takes effect immediately if the
7-64 commissioner finds that immediate and irreparable harm is
7-65 threatened to the public or a plot owner, marker purchaser, or other
7-66 person whose interests are protected by this chapter.

7-67 (b) An emergency order remains in effect unless stayed by
7-68 the commissioner.

7-69 (c) The person named in the emergency order may request in

8-1 writing, not later than the 18th day after the date the order is
8-2 mailed, a hearing to show that the emergency order should be stayed.
8-3 On receipt of the request, the commissioner shall set a time for the
8-4 hearing not later than the 21st day after the date the commissioner
8-5 received the request, unless extended at the request of the person
8-6 named in the order.

8-7 (d) The hearing is an administrative hearing relating to the
8-8 validity of findings that support immediate effect of the order.

8-9 Sec. 712.0445. RECEIVERSHIP PROCEEDINGS. (a) In
8-10 conjunction with a proceeding to forfeit the right to do business in
8-11 this state brought by the attorney general, the attorney general
8-12 may seek the appointment of a receiver. This remedy is in addition
8-13 to other grounds for the appointment of a receiver.

8-14 (b) If the receiver is a private party, the receiver shall
8-15 be compensated from the corporation or, if the corporation has no
8-16 assets available to pay the receiver, from the income only of the
8-17 perpetual care fund. The receiver may not invade the principal of
8-18 the fund.

8-19 (c) The court may appoint a department employee as receiver.
8-20 If the receiver is a department employee, the employee may not
8-21 receive compensation for serving as receiver in addition to the
8-22 employee's regular salary. The department may receive
8-23 reimbursement from the corporation for the travel expenses and the
8-24 fully allocated personnel costs associated with the employee's
8-25 service as receiver.

8-26 (d) A department employee serving as receiver is not
8-27 personally liable for damages arising from the employee's official
8-28 act or omission unless the act or omission is corrupt or malicious.
8-29 The attorney general shall defend an action brought against an
8-30 employee serving as receiver because of an official act or omission
8-31 as receiver regardless of whether the employee has terminated
8-32 service with the department before the action commences.

8-33 SECTION 14. Section 712.048, Health and Safety Code, is
8-34 amended by adding Subsection (c) to read as follows:

8-35 (c) A person commits an offense if the person collects money
8-36 for the purchase of a memorial, as defined by Section 711.001, and
8-37 knowingly defalcates or misappropriates the funds. An offense
8-38 under this subsection is punishable as if it were an offense under
8-39 Section 32.45, Penal Code. This subsection does not prevent an
8-40 aggrieved party or the attorney general from maintaining a civil
8-41 action for the recovery of damages, or the commissioner from
8-42 maintaining an administrative action for restitution, caused by an
8-43 injury resulting from an offense under this subsection.

8-44 SECTION 15. Sections 711.062 and 712.0031 and Subsection
8-45 (e), Section 712.0441, Health and Safety Code, are repealed.

8-46 SECTION 16. A person who owns and operates a perpetual care
8-47 cemetery on September 1, 2011, that on that date complies with
8-48 Sections 712.003 and 712.0031, Health and Safety Code, as those
8-49 sections existed before amendment or repeal by this Act, is
8-50 automatically granted a certificate of authority. The certificate
8-51 of authority expires March 1, 2012, unless the certificate holder
8-52 renews the certificate in accordance with Section 712.0037, Health
8-53 and Safety Code, as added by this Act.

8-54 SECTION 17. This Act takes effect September 1, 2011.

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