

## **BILL ANALYSIS**

C.S.H.B. 52  
By: Flynn  
Investments & Financial Services  
Committee Report (Substituted)

### **BACKGROUND AND PURPOSE**

Currently, a consumer purchasing the burial right in a cemetery plot obtains a property right in the plot that the consumer may in turn sell or will to an heir. Over the years as Americans have become more transient and family status has changed, sales of this property right have increased. In the past, third parties have offered to help families sell a burial right and frequently did so within a given region where the cemetery organizations were familiar with the regional third party sellers.

Interested parties have observed a recent increase in the number of online third party sellers whose websites advertise the sale of burial rights in multiple states. As the practice has become less regional, cemeteries have noticed an increase in the number of situations where the sale of a burial right was not documented with the cemetery. The consumer who purchases the right is often unaware of any problems with the purchase until such time that there is a burial. C.S.H.B. 52 seeks to regulate such third party sellers by establishing a system for registration of cemetery brokers and procedures to document the sale of a plot with a cemetery.

### **RULEMAKING AUTHORITY**

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas in SECTIONS 2, 6, and 10 of this bill.

### **ANALYSIS**

C.S.H.B. 52 amends the Health and Safety Code to prohibit, effective January 1, 2014, a person from acting as a cemetery broker, defined in the bill as a person who sells the exclusive right of sepulture for another person, in the sale or resale of that exclusive right unless the person is registered as a cemetery broker with the Texas Department of Banking or is exempt from such registration under the bill's provisions.

C.S.H.B. 52 expands the rulemaking authority of the Finance Commission of Texas to include cemetery broker registration and the resale of plots by certain persons. The bill requires the department to administer certain provisions of law and of the bill relating to cemetery brokers, the sale or resale of plots, and cemetery organizations. The bill authorizes the finance commission to adopt reasonable rules concerning fees to defray the cost of administering those provisions, the retention and inspection of records relating to the resale of the exclusive right of sepulture in a plot, changes in the management or control of a cemetery broker's business, and any other matter relating to the enforcement and administration of those provisions. The bill prohibits a fee set by the finance commission from producing unnecessary fund balances.

C.S.H.B. 52 subjects resale of the exclusive right of sepulture in a plot to the rules of the applicable cemetery organization and any restrictions in the certificate of ownership, quitclaim agreement, or other instrument of conveyance. The bill sets out requirements for the form of such an agreement or instrument, related signature requirements, and related filing and recording deadlines. The bill requires a cemetery organization, on request of a person acting as a cemetery

broker, to provide its rules, conveyance forms, and written guidelines and procedures for brokered sales, if any. The bill prohibits the resale of the exclusive right of sepulture in a group of interment rights that were conveyed collectively from being divided without the consent of the cemetery organization. The bill requires a person acting as a cemetery broker that sells or resells the right of sepulture in a plot to collect and remit to the cemetery organization all fees required by law and any other fee required by the rules of the cemetery organization. The bill prohibits a fee required by a rule of the cemetery organization for such sale or resale from exceeding the fee charged by the cemetery organization on the sale of the right of sepulture in a plot. The bill requires a person acting as a cemetery broker to keep a record containing certain specified information of each sale or resale. The bill makes these provisions relating to the sale or resale of plots by certain persons effective January 1, 2014.

C.S.H.B. 52 requires the department to examine the records of each person acting as a cemetery broker if the banking commissioner of Texas determines the examination is necessary to safeguard the interests of purchasers and beneficiaries of the exclusive right of sepulture in a plot and to efficiently enforce applicable law. The bill authorizes a person to maintain and provide a record required to be maintained in an electronic format if the record is reliable and can be retrieved in a timely manner. The bill requires the banking commissioner or the commissioner's agent to impose on the cemetery broker a fee in an amount set by the finance commission and sufficient to cover specified costs of conducting the examination, the equitable or proportionate cost of maintaining and operating the department, and the cost of enforcing the department's powers and duties relating to cemetery brokers.

C.S.H.B. 52 requires a person to register as a cemetery broker by filing with the department a notarized statement that contains certain identifying and contact information and exempts specified persons from these registration requirements. The bill makes the registration of a cemetery broker valid until it is withdrawn or revoked and establishes that periodic renewal of the registration is not required. The bill requires a broker to update the registration statement within a specified period, authorizes the department to charge a fee of up to \$100 per year to cover the costs of filing and maintaining the registration statement and administering the bill's provisions, subjects the broker to rules adopted by the finance commission regarding the manner in which the cemetery broker provides consumers with information on how to file complaints with the department, and requires the rules to be consistent with the obligations imposed by the bill's provisions. The bill sets out provisions relating to procedures for handling complaints concerning the cemetery broker, including provisions authorizing the department to require the cemetery broker to resolve the complaint or provide the department with a response to the complaint or to provide written direction requiring the broker to take specific action to resolve the complaint. The bill authorizes a cemetery broker to withdraw the broker's registration at any time. The bill specifies the circumstances under which the banking commissioner is authorized to revoke the registration of a registered cemetery broker and the procedures governing such a revocation and the broker's appeal of such a revocation. The bill makes these provisions relating to cemetery broker registration effective January 1, 2014.

C.S.H.B. 52 specifies that a person who is an officer, agent, or employee of a cemetery organization or its affiliate and who is exempt from registration under the bill's provisions is not required to be licensed or registered, as applicable, to sell a plot in a dedicated cemetery.

C.S.H.B. 52 creates a Class A misdemeanor offense for a person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of such an entity, to offer or receive monetary inducement to solicit business for a cemetery broker, to fail or refuse to keep records of sales or resales or to collect and remit fees as required by the bill's provisions, or to fail or refuse to register as a cemetery broker as required by the bill's provisions. The bill authorizes the banking commissioner to cancel or not renew a person's cemetery broker registration if, after a hearing conducted as provided by the Administrative Procedure Act, the trier of fact finds that a violation of statutory provisions relating to cemeteries or a rule of the finance commission establishes a pattern of wilful disregard for such requirements and rules and

recommends such cancellation or nonrenewal to the banking commissioner.

C.S.H.B. 52 sets out provisions relating to the banking commissioner's authority to issue an emergency order with immediate effect if the commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a sale of the exclusive right of sepulture in a plot and establishes procedures for a person named in the emergency order to submit a written request for an administrative hearing in order to show that the emergency order should be stayed. The bill sets out provisions relating to the banking commissioner's authority to issue an order to a person requiring restitution, an order to seize accounts in which funds from the sale of the exclusive right of sepulture in a plot, including earnings, may be held, and an order to seize the records that relate to the sale of the exclusive right of sepulture in a plot based on certain commissioner findings regarding specified violations of the bill's provisions. The bill establishes provisions for the service, duration, and stay of emergency and nonemergency orders and for the initiation of an administrative claim for ancillary relief, including a claim for costs incurred in the administration, transfer, or other disposition of the seized assets and records or costs reasonably expected to be incurred in connection with the administration and performance of any outstanding certificate of ownership or other instrument of conveyance that is a part of a sale by the person subject to the order. The bill specifies that the remedy is not exclusive and authorizes the banking commissioner to seek an additional remedy authorized by the bill's provisions.

### **EFFECTIVE DATE**

Except as otherwise provided, on passage, or, if the bill does not receive the necessary vote, September 1, 2013.

### **COMPARISON OF ORIGINAL AND SUBSTITUTE**

While C.S.H.B. 52 may differ from the original in minor or nonsubstantive ways, the following comparison is organized and highlighted in a manner that indicates the substantial differences between the introduced and committee substitute versions of the bill.

INTRODUCED	HOUSE COMMITTEE SUBSTITUTE
SECTION 1. Section 711.001, Health and Safety Code, is amended by adding Subdivision (2-b).	SECTION 1. Same as introduced version.
SECTION 2. Section 711.012(a), Health and Safety Code, is amended.	SECTION 2. Same as introduced version.
SECTION 3. The heading to Section 711.038, Health and Safety Code, is amended.	SECTION 3. Same as introduced version.
SECTION 4. Section 711.038(e), Health and Safety Code, is amended.	SECTION 4. Same as introduced version.
SECTION 5. Subchapter C, Chapter 711, Health and Safety Code, is amended by adding Section 711.0381 to read as follows:	SECTION 5. Subchapter C, Chapter 711, Health and Safety Code, is amended by adding Section 711.0381 to read as follows:

Sec. 711.0381. SALE OR RESALE OF PLOTS BY CERTAIN PERSONS. (a) A person may not act as a cemetery broker in the sale or resale of the exclusive right of sepulture in a plot unless the person is registered as a cemetery broker under Subchapter C-1 or is exempt from registration under Subchapter C-1.

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

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

(2) signed by:

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

(B) the designated purchaser or transferee; and

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

(3) filed and recorded with the cemetery organization not later than the third business day after the date of the sale.

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

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

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

(1) all fees required by law; and

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

(f) A fee required by a rule of the cemetery organization for the sale or resale of the right of sepulture in a plot under this section may

Sec. 711.0381. SALE OR RESALE OF PLOTS BY CERTAIN PERSONS. (a) A person may not act as a cemetery broker in the sale or resale of the exclusive right of sepulture in a plot unless the person is registered as a cemetery broker under Subchapter C-1 or is exempt from registration under Subchapter C-1.

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

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

(2) signed by:

(A) the grantee named in the certificate of ownership or other instrument of conveyance as filed and recorded in the cemetery organization's office in accordance with Section 711.038 or 711.039(g)(2), as the seller or transferor;

(B) the designated purchaser or transferee; and

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

(3) filed and recorded with the cemetery organization not later than the third business day after the date of the sale.

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

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

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

(1) all fees required by law; and

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

(f) A fee required by a rule of the cemetery organization for the sale or resale of the right of sepulture in a plot under this section may

not exceed the fee charged by the cemetery organization on the sale of the right of sepulture in a plot under Section 711.038.

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

- (1) the name and address of the purchaser;
- (2) the date of the purchase;
- (3) a copy of the purchase agreement, with the name and address of the cemetery;
- (4) a specific description of the interment rights;
- (5) the purchase price;
- (6) the amount of fees collected and remitted in accordance with Subsection (e); and
- (7) information on the disposal of the purchase agreement, including whether the agreement was conveyed, canceled, or voided.

SECTION 6. Chapter 711, Health and Safety Code, is amended by adding SUBCHAPTER C-1. CEMETERY BROKER REGISTRATION

SECTION 7. Section 711.052(a), Health and Safety Code, is amended.

SECTION 8. Section 711.056(a), Health and Safety Code, is amended.

SECTION 9. Subchapter D, Chapter 711, Health and Safety Code, is amended by adding Sections 711.057, 711.058, and 711.059.

SECTION 10. Chapter 711, Health and Safety Code, is amended by adding Subchapter F.

SECTION 11. (a) Except as provided by Subsection (b) of this section, this Act takes effect immediately if it receives a vote of two-thirds of all the members elected to each house, as provided by Section 39, Article III, Texas Constitution. Except as provided by Subsection (b) of this section, if this Act does not receive the vote necessary for immediate effect, this Act takes effect September 1, 2013.

(b) Section 711.0381 and Subchapter C-1,

not exceed the fee charged by the cemetery organization on the sale of the right of sepulture in a plot under Section 711.038.

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

- (1) the name and address of the purchaser;
- (2) the date of the purchase;
- (3) a copy of the purchase agreement, with the name and address of the cemetery;
- (4) a specific description of the interment rights;
- (5) the purchase price;
- (6) the amount of fees collected and remitted in accordance with Subsection (e); and
- (7) information on the disposal of the purchase agreement, including whether the agreement was conveyed, canceled, or voided.

SECTION 6. Same as introduced version.

SECTION 7. Same as introduced version.

SECTION 8. Same as introduced version.

SECTION 9. Same as introduced version.

SECTION 10. Same as introduced version.

SECTION 11. Same as introduced version.

Chapter 711, Health and Safety Code, as added by this Act, take effect January 1, 2014.