

BILL ANALYSIS

C.S.H.B. 2879
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Investments & Financial Services
Committee Report (Substituted)

BACKGROUND AND PURPOSE

Recently enacted legislation sought to clarify various aspects of perpetual care cemetery ownership, construction, and final disposition and revised the application process and enforcement provisions for perpetual care cemeteries. However, interested parties have identified several issues since the passage of that legislation that need attention. C.S.H.B. 2879 seeks to continue to improve the oversight of perpetual care cemeteries.

RULEMAKING AUTHORITY

It is the committee's opinion that rulemaking authority is expressly granted to the Finance Commission of Texas and to the Texas Funeral Service Commission in SECTION 2 of this bill.

ANALYSIS

C.S.H.B. 2879 amends the Health and Safety Code to authorize the Finance Commission of Texas to adopt rules and the Texas Funeral Service Commission to adopt rules, establish procedures, and prescribe forms to enforce and administer statutory provisions relating to the construction of and default on a lawn crypt section of a cemetery and relating to contract disclosures required in a sales contract for an undeveloped lawn crypt space.

C.S.H.B. 2879 removes a requirement that a corporation conducting a business for cemetery purposes be either a nonprofit corporation organized in accordance with the Texas Non-profit Corporation Act or statutory provisions relating to formation of a nonprofit cemetery corporation by cemetery plot owners or a private corporation operated for profit. The bill instead requires such a corporation to be a filing entity or foreign filing entity as defined by the Business Organizations Code. The bill specifies that the formation and governance of a nonprofit corporation for cemetery purposes is subject to statutory provisions relating to the formation of a nonprofit cemetery corporation by cemetery plot owners and relating to the rights of plot owners in a cemetery owned by a nonprofit corporation.

C.S.H.B. 2879 requires an amended map or plat required to be filed with the county clerk by a cemetery organization, if a change in the shape and size of a cemetery property is made under a provision in a certificate or declaration of dedication of the property, to be filed not later than the last day of the next calendar quarter. The bill specifies that a cemetery organization that holds a certificate of authority to operate a perpetual care cemetery is not required to file an amended map or plat if the only change to the property is the placement of a cremains receptacle that contains not more than four niches on a plot or the alteration of an existing cremains receptacle on a plot and if the cemetery organization maintains records that specify the location of the cremains receptacle, as required by rules adopted by the finance commission. The bill defines "cremains receptacle" as a marker, boulder, bench, pedestal, pillar, or other aboveground vessel that contains niches for cremated remains.

C.S.H.B. 2879 shortens, from the 91st day to the 30th day after the date a cemetery corporation receives notice from the attorney general of a violation of statutory provisions relating to

cemeteries or perpetual care cemeteries, the deadline by which the cemetery corporation must correct the violation or forfeit its charter and the right to do business in Texas. The bill authorizes the attorney general to bring suit or quo warranto proceedings in a district court of Travis County, in addition to a district court of any county in which the violation occurred, for the forfeiture of a corporation's charter and the dissolution of the corporation if a violation is not corrected before the deadline.

C.S.H.B. 2879 makes it a second degree felony offense for a person who is an individual, firm, association, corporation, or municipality or an officer, agent, or employee of an individual, firm, association, corporation, or municipality to make more than one interment in a plot in a cemetery operated by a cemetery organization without obtaining consent from each owner of the plot or for such a person to remove remains from a plot in such a cemetery without complying with statutory provisions relating to the removal of remains.

C.S.H.B. 2879 requires a corporation chartered on or after September 1, 1993, and before September 1, 2013, to have at least \$75,000 in capital for each certificate of authority to operate a perpetual care cemetery issued to the corporation on or after September 1, 2013, in addition to the required \$75,000 in minimum capital. The bill requires a corporation whose certificate of formation takes effect on or after September 1, 2013, to have a minimum of \$75,000 in capital for each certificate of authority to operate a perpetual care cemetery issued to the corporation.

C.S.H.B. 2879 includes as a condition under which a proposed transferee of business ownership of a perpetual care cemetery who is not a certificate holder is required to file any necessary document with the secretary of state and an application for a certificate of authority with the Texas Department of Banking the condition that the proposed transferee would own more than 50 percent of the stock or other ownership or membership interest of the corporation.

C.S.H.B. 2879 authorizes the banking commissioner to report to the attorney general a violation of law relating to perpetual care cemeteries or a final order of the banking commissioner or rule of the finance commission that has not been corrected before the 31st day after, rather than within 90 days after, the corporation operating a perpetual care cemetery receives notice of the violation and requires the attorney to bring suit or quo warranto proceedings for the forfeiture of a corporation's charter and the dissolution of the corporation in a district court of Travis County, in addition to a district court of any county in which the corporation's perpetual care cemetery is operated.

EFFECTIVE DATE

September 1, 2013.

COMPARISON OF ORIGINAL AND SUBSTITUTE

While C.S.H.B. 2879 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

SECTION 1. Section 711.001, Health and Safety Code, is amended by adding Subdivision (5-a) and amending Subdivisions (6) and (21) to read as follows:
(5-a) "Cremains receptacle" means a marker, boulder, bench, pedestal, pillar, or other aboveground vessel that contains not

HOUSE COMMITTEE SUBSTITUTE

SECTION 1. Section 711.001, Health and Safety Code, is amended by adding Subdivision (5-a) and amending Subdivisions (6) and (21) to read as follows:
(5-a) "Cremains receptacle" means a marker, boulder, bench, pedestal, pillar, or other aboveground vessel that contains

more than four niches for cremated remains.

(6) "Cremated remains" or "cremains" means the bone fragments remaining after the cremation process, which may include the residue of any foreign materials that were cremated with the human remains.

(21) "Niche" means a space in a columbarium or cremains receptacle used or intended to be used for the placement of cremated remains in an urn or other container.

SECTION 2. Sections 711.012(a) and (b), Health and Safety Code, are amended.

SECTION 3. Section 711.021, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

(b) A corporation conducting a business for cemetery purposes, including the sale of plots, may be formed only as provided by this section. The corporation must be a filing entity or foreign filing entity that is a private for-profit corporation or nonprofit corporation, as those terms are defined by Section 1.002, Business Organizations Code [either:

~~[(1) a nonprofit corporation organized in accordance with Section A or B, Article 3.01, Texas Non Profit Corporation Act (Article 1396-3.01, Vernon's Texas Civil Statutes), or with Section 711.022; or~~

~~[(2) a private corporation operated for profit].~~

(b-1) The formation and governance of a nonprofit corporation for cemetery purposes is subject to Sections 711.022 and 711.023.

SECTION 4. Section 711.034, Health and Safety Code, is amended by amending Subsection (e) and adding Subsection (e-1) to read as follows:

(e) The certificate or declaration may contain a provision permitting the directors by order to resurvey and change the shape and size of the property for which the associated map or plat is filed if that change does not disturb any interred remains. Except as provided by Subsection (e-1), if [H] a change is made, the cemetery organization shall:

(1) file an amended map or plat not later than the last day of the next calendar quarter; and

niches for cremated remains.

(6) "Cremated remains" or "cremains" means the bone fragments remaining after the cremation process, which may include the residue of any foreign materials that were cremated with the human remains.

(21) "Niche" means a space in a columbarium or cremains receptacle used or intended to be used for the placement of cremated remains in an urn or other container.

SECTION 2. Same as introduced version.

SECTION 3. Section 711.021, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (b-1) to read as follows:

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(1) file an amended map or plat not later than the last day of the next calendar quarter; and

(2) ~~shall~~ indicate any change in a specific unique number assigned to a plot, crypt, lawn crypt, or columbarium niche.

(e-1) A cemetery organization that holds a certificate of authority to operate a perpetual care cemetery under Chapter 712 is not required to file an amended map or plat if:

(1) the only change to the property is:

(A) the placement of a cremains receptacle on a plot; or

(B) the alteration of an existing cremains receptacle on a plot; and

(2) the cemetery organization maintains records, as required by rules adopted by the Finance Commission of Texas, that specify the location of the cremains receptacle.

SECTION 5. Sections 711.051(a) and (c), Health and Safety Code, are amended.

SECTION 6. Sections 711.052(a) and (d), Health and Safety Code, are amended.

SECTION 7. Section 712.003, Health and Safety Code, is amended by amending Subsection (c) and adding Subsection (c-1) to read as follows:

(c) A corporation chartered on or after September 1, 1993, and before September 1, 2013, must have:

(1) a minimum capital of \$75,000; and

(2) \$75,000 in capital for each certificate of authority to operate a perpetual care cemetery issued to the corporation on or after September 1, 2013.

(c-1) A corporation whose certificate of formation takes effect on or after September 1, 2013, must have \$75,000 in capital for each certificate of authority to operate a perpetual care cemetery issued to the corporation.

SECTION 8. Section 712.0039(b), Health and Safety Code, is amended.

SECTION 9. Section 712.0441(g), Health and Safety Code, is amended.

SECTION 10. Sections 711.051(a) and (c) and 712.0441(g), Health and Safety Code, as amended by this Act, apply only to a violation that occurs on or after the effective date of this Act. A violation that occurs before the effective date of this Act is

(2) ~~shall~~ indicate any change in a specific unique number assigned to a plot, crypt, lawn crypt, or columbarium niche.

(e-1) A cemetery organization that holds a certificate of authority to operate a perpetual care cemetery under Chapter 712 is not required to file an amended map or plat if:

(1) the only change to the property is:

(A) the placement of a cremains receptacle that ~~contains not more than four niches~~ on a plot; or

(B) the alteration of an existing cremains receptacle on a plot; and

(2) the cemetery organization maintains records, as required by rules adopted by the Finance Commission of Texas, that specify the location of the cremains receptacle.

SECTION 5. Same as introduced version.

SECTION 6. Same as introduced version.

SECTION 7. Section 712.003, Health and Safety Code, is amended by amending Subsection (c) and adding Subsection (c-1) to read as follows:

(c) A corporation chartered on or after September 1, 1993, and before September 1, 2013, must have:

(1) a minimum capital of \$75,000; and

(2) ~~a minimum of~~ \$75,000 in capital for each certificate of authority to operate a perpetual care cemetery issued to the corporation on or after September 1, 2013.

(c-1) A corporation whose certificate of formation takes effect on or after September 1, 2013, must have ~~a minimum of~~ \$75,000 in capital for each certificate of authority to operate a perpetual care cemetery issued to the corporation.

SECTION 8. Same as introduced version.

SECTION 9. Same as introduced version.

SECTION 10. Same as introduced version.

governed by the law applicable to the violation immediately before that date, and the former law is continued in effect for that purpose.

SECTION 11. This Act takes effect September 1, 2013.

SECTION 11. Same as introduced version.