

BILL ANALYSIS

Senate Research Center

S.B. 661
By: Carona
Business & Commerce
7/11/2013
Enrolled

AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The 82nd Legislature, Regular Session, 2011, passed S.B. 1167, which clarified various aspects of perpetual care cemetery ownership, construction, and final disposition. S.B. 1167 also revised the application process and enforcement provisions for perpetual care cemeteries. However, several issues have been identified since the passage of that legislation.

In order to continue to improve the oversight of perpetual care cemeteries, S.B. 661 clarifies when it is necessary to plat and file amended plats with a county clerk's office, adds criminal penalties for unauthorized multiple burials and removal of remains, and adds Travis County as a venue for suit or quo warrant proceedings.

S.B. 661 amends current law relating to cemeteries and perpetual care cemetery corporations, and creates an offense.

RULEMAKING AUTHORITY

Rulemaking authority previously granted to the Finance Commission of Texas is modified in SECTION 2 (Section 711.012, Health and Safety Code) and SECTION 4 (Section 711.034, Health and Safety Code) of this bill.

Rulemaking authority previously granted to the Texas Funeral Service Commission is modified in SECTION 2 (Section 711.012, Health and Safety Code) of this bill.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 711.001, Health and Safety Code, by adding Subdivision (5-a) and amending Subdivisions (6) and (21), to define "cremains receptacle" and "cremains," and redefine "niche."

SECTION 2. Amends Sections 711.012(a) and (b), Health and Safety Code, as follows:

(a) Adds Sections 711.063 (Construction; Default) and 711.064 (Contract Disclosures) to the list of sections relating to perpetual care cemeteries for which the Finance Commission of Texas (finance commission) is authorized to adopt rules to enforce and administer. Deletes Section 711.062 (Formation of Corporation to Maintain and Operate Cemetery) from the list of sections for which the finance commission is authorized to adopt rules to enforce and administer.

(b) Adds Sections 711.063 and 711.064 to the list of sections relating to cemeteries that are not perpetual care cemeteries for which the Texas Funeral Service Commission (TFSC) is authorized to adopt rules, establish procedures, and prescribe forms to enforce and administer. Deletes Section 711.062 from the list of sections for which TFSC is authorized to adopt rules, establish procedures, and prescribe forms to enforce and administer.

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

(b) Requires the corporation to be a filing entity or foreign filing entity, as those terms are defined by Section 1.002 (Definitions), Business Organizations Code. Deletes existing text requiring the corporation to be either a nonprofit corporation organized in accordance with Section A or B, Article 3.01 (Incorporators), Texas Non-Profit Corporation Act (Article 1396-3.01, V.T.C.S. [Codified in Sections 3.004 (Organizations) and 22.101 (Incorporation of Certain Organizations), Business Organizations Code, respectively]), or with Section 711.022 (Formation of Nonprofit Cemetery Corporation by Plot Owners), or a private corporation operated for profit.

(b-1) Provides that the formation and governance of a nonprofit corporation for cemetery purposes is subject to Sections 711.022 and 711.023 (Rights of Plot Owners in Cemetery Operated by Nonprofit Cemetery Corporation).

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

(e) Requires the cemetery organization, except as provided by Subsection (e-1), if a change is made, to file an amended map or plat not later than the last day of the next calendar quarter and indicate any change in a specific unique number assigned to a plot, crypt, lawn crypt, or columbarium niche.

(e-1) Provides that a cemetery organization that holds a certificate of authority to operate a perpetual care cemetery under Chapter 712 (Perpetual Care Cemeteries) 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 the cemetery organization maintains records, as required by rules adopted by the finance commission, that specify the location of the cremains receptacle.

SECTION 5. Amends Sections 711.051(a) and (c), Health and Safety Code, as follows:

(a) Provides that a cemetery corporation that violates this chapter or Chapter 712 forfeits the corporation's charter and right to do business in this state unless the corporation corrects the violation before the 30th, rather than 91st, day after the date of receiving notice of the violation from the attorney general.

(c) Requires the attorney general, if the violation is not corrected before the 30th, rather than 91st, day after the notice, to bring suit or quo warranto proceedings for the forfeiture of the corporation's charter and dissolution of the corporation in a district court of Travis County or of any county in which the violation occurred. Makes a nonsubstantive change.

SECTION 6. Amends Sections 711.052(a) and (d), Health and Safety Code, as follows:

(a) Provides that 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, commits an offense if the person:

(1)-(2) Makes no change to these subdivisions;

(3)-(4) Makes nonsubstantive changes;

(5) makes more than one interment in a plot in a cemetery operated by a cemetery organization other than as provided by Section 711.0395 (Multiple Interments In Same Plot); or

(6) removes remains from a plot in a cemetery operated by a cemetery organization without complying with Section 711.004 (Removal of Remains).

(d) Provides that except as provided by this subsection, an offense under this section is a Class A misdemeanor. Provides that an offense under Subsection (a)(5) or (6) is a felony of the second degree.

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

(c) Requires a corporation chartered on or after September 1, 1993, and before September 1, 2013, to have a minimum capital of \$75,000 and 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) 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.

SECTION 8. Amends Section 712.0039(b), Health and Safety Code, as follows:

(b) Requires the proposed transferee, if the proposed transferee would own more than 50 percent of the stock or other ownership or membership interest of the corporation and is not a certificate holder, to file any necessary documents with the secretary of state and an application for a certificate of authority with the Banking Department of Texas as required by this chapter. Prohibits the transfer of the perpetual care fund, if the proposed transferee is required to apply for a certificate of authority under this subsection, from occurring until after the date a certificate of authority is issued to the transferee applicant.

SECTION 9. Amends Section 712.0441(g), Health and Safety Code, as follows:

(g) Authorizes the banking commissioner of Texas, if a violation described in Subsection (a) (relating to authorizing the banking commissioner to report violations to the attorney general) has not been corrected before the 31st day after the date the corporation receives written notice, rather than has not been corrected within 90 days after the receipt of written notice from the banking commissioner of the violation, to report the violation to the attorney general, who is required to bring suit or quo warranto proceedings for the forfeiture of the corporation's charter and dissolution of the corporation in a district court of Travis County or of any county in which the corporation's perpetual care cemetery is operated. Makes nonsubstantive changes.

SECTION 10. Provides that Sections 711.051(a) and (c), and Section 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. Provides that a violation that occurs before the effective date of this Act is 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. Effective date: September 1, 2013.