

1-1 By: Flynn (Senate Sponsor - Carona) H.B. No. 52  
 1-2 (In the Senate - Received from the House May 1, 2013;  
 1-3 May 2, 2013, read first time and referred to Committee on Business  
 1-4 and Commerce; May 15, 2013, reported favorably by the following  
 1-5 vote: Yeas 6, Nays 2; May 15, 2013, sent to printer.)

1-6 COMMITTEE VOTE

	Yea	Nay	Absent	PNV
1-7 Carona	X			
1-8 Taylor			X	
1-9 Eltife		X		
1-10 Estes		X		
1-11 Hancock	X			
1-12 Lucio	X			
1-13 Van de Putte	X			
1-14 Watson	X			
1-15 Whitmire	X			

1-17 A BILL TO BE ENTITLED  
 1-18 AN ACT

1-19 relating to the sale of a cemetery plot; providing penalties;  
 1-20 authorizing a fee.

1-21 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

1-22 SECTION 1. Section 711.001, Health and Safety Code, is  
 1-23 amended by adding Subdivision (2-b) to read as follows:

1-24 (2-b) "Cemetery broker" means a person who sells the  
 1-25 exclusive right of sepulture for another person. The term does not  
 1-26 include a person who:

1-27 (A) is an officer, agent, or employee of the  
 1-28 cemetery organization in which the plot is located and who is exempt  
 1-29 from registration under Subchapter C-1; or

1-30 (B) originally purchased the exclusive right of  
 1-31 sepulture for personal use.

1-32 SECTION 2. Section 711.012(a), Health and Safety Code, is  
 1-33 amended to read as follows:

1-34 (a) The Finance Commission of Texas may adopt rules to  
 1-35 enforce and administer Subchapter C-1 and Sections 711.003,  
 1-36 711.004, 711.007, 711.008, 711.0105, 711.021-711.024,  
 1-37 711.032-711.036, 711.038, 711.0381, 711.040-711.042, 711.052, and  
 1-38 711.061[, and 711.062] relating to perpetual care cemeteries.

1-39 SECTION 3. The heading to Section 711.038, Health and  
 1-40 Safety Code, is amended to read as follows:

1-41 Sec. 711.038. SALE OF PLOTS BY CEMETERY ORGANIZATIONS.

1-42 SECTION 4. Section 711.038(e), Health and Safety Code, is  
 1-43 amended to read as follows:

1-44 (e) A person who is an officer, agent, or employee of the  
 1-45 cemetery organization or its affiliate and who is exempt from  
 1-46 registration under Subchapter C-1 is not required to be licensed or  
 1-47 registered to sell a plot in a dedicated cemetery.

1-48 SECTION 5. Subchapter C, Chapter 711, Health and Safety  
 1-49 Code, is amended by adding Section 711.0381 to read as follows:

1-50 Sec. 711.0381. SALE OR RESALE OF PLOTS BY CERTAIN PERSONS.

1-51 (a) A person may not act as a cemetery broker in the sale or resale  
 1-52 of the exclusive right of sepulture in a plot unless the person is  
 1-53 registered as a cemetery broker under Subchapter C-1 or is exempt  
 1-54 from registration under Subchapter C-1.

1-55 (b) Resale of the exclusive right of sepulture in a plot is  
 1-56 subject to the rules of the cemetery organization and any  
 1-57 restrictions in the certificate of ownership, quitclaim agreement,  
 1-58 or other instrument of conveyance. A quitclaim agreement or other  
 1-59 instrument evidencing the conveyance of the exclusive right of  
 1-60 sepulture must be:

1-61 (1) in a form authorized by or otherwise acceptable to

2-1 the cemetery organization, subject to Subsection (c);  
2-2 (2) signed by:  
2-3 (A) the grantee named in the certificate of  
2-4 ownership or other instrument of conveyance as filed and recorded  
2-5 in the cemetery organization's office in accordance with Section  
2-6 711.038 or 711.039(g)(2), as the seller or transferor;  
2-7 (B) the designated purchaser or transferee; and  
2-8 (C) each cemetery broker or other agent assisting  
2-9 in the transfer of the interment rights; and  
2-10 (3) filed and recorded with the cemetery organization  
2-11 not later than the third business day after the date of the sale.  
2-12 (c) On request of a person acting as a cemetery broker, a  
2-13 cemetery organization shall provide its rules, conveyance forms,  
2-14 and written guidelines and procedures for brokered sales, if any.  
2-15 (d) The resale of the exclusive right of sepulture in a  
2-16 group of interment rights that were conveyed collectively may not  
2-17 be divided without the consent of the cemetery organization.  
2-18 (e) A person acting as a cemetery broker that sells or  
2-19 resells the right of sepulture in a plot shall collect and remit to  
2-20 the cemetery organization:  
2-21 (1) all fees required by law; and  
2-22 (2) any other fee required by the rules of the cemetery  
2-23 organization, subject to Subsection (f).  
2-24 (f) A fee required by a rule of the cemetery organization  
2-25 for the sale or resale of the right of sepulture in a plot under this  
2-26 section may not exceed the fee charged by the cemetery organization  
2-27 on the sale of the right of sepulture in a plot under Section  
2-28 711.038.  
2-29 (g) A person acting as a cemetery broker must keep a record  
2-30 of each sale or resale under this section. The record must include:  
2-31 (1) the name and address of the purchaser;  
2-32 (2) the date of the purchase;  
2-33 (3) a copy of the purchase agreement, with the name and  
2-34 address of the cemetery;  
2-35 (4) a specific description of the interment rights;  
2-36 (5) the purchase price;  
2-37 (6) the amount of fees collected and remitted in  
2-38 accordance with Subsection (e); and  
2-39 (7) information on the disposal of the purchase  
2-40 agreement, including whether the agreement was conveyed, canceled,  
2-41 or voided.  
2-42 SECTION 6. Chapter 711, Health and Safety Code, is amended  
2-43 by adding Subchapter C-1 to read as follows:  
2-44 SUBCHAPTER C-1. CEMETERY BROKER REGISTRATION  
2-45 Sec. 711.045. DEFINITIONS. In this subchapter:  
2-46 (1) "Commission" means the Finance Commission of  
2-47 Texas.  
2-48 (2) "Commissioner" means the banking commissioner of  
2-49 Texas.  
2-50 (3) "Department" means the Texas Department of  
2-51 Banking.  
2-52 Sec. 711.046. CEMETERY BROKER REGISTRATION. (a) To register  
2-53 under this subchapter, a cemetery broker shall file with the  
2-54 department a sworn, notarized statement that contains:  
2-55 (1) the name and street address of the cemetery  
2-56 broker;  
2-57 (2) the name, street address, and telephone number of  
2-58 the representative of the cemetery broker to be contacted regarding  
2-59 a written complaint; and  
2-60 (3) any Internet or other electronic mail address of  
2-61 the cemetery broker.  
2-62 (b) The registration of a cemetery broker is valid until  
2-63 withdrawn or revoked. Periodic renewal of the registration is not  
2-64 required.  
2-65 (c) A registered cemetery broker shall update the  
2-66 information contained in the registration statement not later than  
2-67 the 60th day after the date the information changes.  
2-68 (d) The department may charge a cemetery broker a reasonable  
2-69 fee to cover the costs of filing and maintaining the registration

3-1 statement and administering this chapter. The administration fee  
 3-2 may not exceed \$100 per year.

3-3 Sec. 711.047. EXEMPTIONS. This subchapter does not apply  
 3-4 to a person offering to sell or selling the exclusive right of  
 3-5 sepulture in a plot if the person is:

3-6 (1) an officer, agent, employee, or affiliate of the  
 3-7 cemetery organization in which the plot is located, acting at the  
 3-8 direction or under the control of the cemetery organization;

3-9 (2) an employee of a registered cemetery broker;

3-10 (3) with respect to the specific plot for sale:

3-11 (A) a grantee named in the certificate of  
 3-12 ownership or other instrument of conveyance for the plot as filed  
 3-13 and recorded in the cemetery organization's office under Section  
 3-14 711.038;

3-15 (B) a spouse or other heir of the named grantee as  
 3-16 described by Section 711.039;

3-17 (C) an executor, administrator, or guardian of  
 3-18 the named grantee appointed by court order; or

3-19 (D) an attorney-in-fact for the named grantee  
 3-20 under a durable power of attorney if the person is not otherwise  
 3-21 engaged in the business of a cemetery broker and does not solicit  
 3-22 appointment as attorney-in-fact for the purpose of offering to sell  
 3-23 or selling the exclusive right of sepulture of the named grantee; or

3-24 (4) otherwise exempt in accordance with rules adopted  
 3-25 by the commission as necessary to protect the public health and  
 3-26 safety.

3-27 Sec. 711.048. COMPLAINTS. (a) A cemetery broker is subject  
 3-28 to rules adopted under Section 11.307, Finance Code, regarding the  
 3-29 manner in which the cemetery broker provides consumers with  
 3-30 information on how to file complaints with the department. The  
 3-31 rules must be consistent with the obligations imposed by this  
 3-32 section.

3-33 (b) If the department receives a signed written complaint  
 3-34 from a person concerning a cemetery broker, the department shall  
 3-35 provide written notification of the complaint to the cemetery  
 3-36 broker's designated representative not later than the 31st day  
 3-37 after the date the complaint was received and provide a copy of the  
 3-38 complaint to the representative. The department may:

3-39 (1) require the cemetery broker to resolve the  
 3-40 complaint or to provide the department with a response to the  
 3-41 complaint; or

3-42 (2) provide written direction requiring the cemetery  
 3-43 broker to take specific action to resolve the complaint.

3-44 Sec. 711.049. TERMINATION OF REGISTRATION. (a) A cemetery  
 3-45 broker may withdraw the cemetery broker's registration at any time.

3-46 (b) After notice and opportunity for a hearing, the  
 3-47 commissioner may revoke the registration of a registered cemetery  
 3-48 broker that:

3-49 (1) fails to pay the annual administration fee and  
 3-50 fails to cure the default not later than the 30th day after the date  
 3-51 written notice of the default is mailed by the department to the  
 3-52 cemetery broker;

3-53 (2) fails or refuses to comply with the department's  
 3-54 written request for a response to a complaint; or

3-55 (3) the commissioner concludes, after considering a  
 3-56 complaint filed under this subchapter, has engaged in an  
 3-57 intentional course of conduct that:

3-58 (A) violates federal or state law; or

3-59 (B) constitutes improper, fraudulent, or  
 3-60 dishonest dealings.

3-61 (c) The commissioner shall state the basis of the decision  
 3-62 in an order revoking the registration of a cemetery broker. The  
 3-63 cemetery broker may appeal an order revoking registration in the  
 3-64 manner provided by Chapter 2001, Government Code.

3-65 SECTION 7. Section 711.052(a), Health and Safety Code, is  
 3-66 amended to read as follows:

3-67 (a) A person who is an individual, firm, association,  
 3-68 corporation, or municipality, or an officer, agent, or employee of  
 3-69 an individual, firm, association, corporation, or municipality,

4-1 commits an offense if the person:

4-2 (1) engages in a business for cemetery purposes in

4-3 this state other than through a corporation organized for that

4-4 purpose, if a corporation is required by law;

4-5 (2) fails or refuses to keep records of interment as

4-6 required by Sections 711.003 and 711.004;

4-7 (3) sells, offers to sell, or advertises for sale a

4-8 plot or the exclusive right of sepulture in a plot for purposes of

4-9 speculation or investment; ~~[or]~~

4-10 (4) represents through advertising or printed

4-11 material that a retail department will be established for the

4-12 resale of the plots of plot purchasers, that specific improvements

4-13 will be made in the cemetery, or that specific merchandise or

4-14 services will be furnished to a plot owner, unless adequate funds or

4-15 reserves are created by the cemetery organization for the

4-16 represented purpose;

4-17 (5) offers or receives monetary inducement to solicit

4-18 business for a cemetery broker;

4-19 (6) fails or refuses to keep records of sales or

4-20 resales or to collect and remit fees as required by Section

4-21 711.0381; or

4-22 (7) fails or refuses to register as a cemetery broker

4-23 as required by Subchapter C-1.

4-24 SECTION 8. Section 711.056(a), Health and Safety Code, is

4-25 amended to read as follows:

4-26 (a) If after a hearing conducted as provided by Chapter

4-27 2001, Government Code, the trier of fact finds that a violation of

4-28 this chapter or a rule of the Finance Commission of Texas

4-29 establishes a pattern of wilful disregard for the requirements of

4-30 this chapter or rules of the finance commission, the trier of fact

4-31 shall recommend to the commissioner that the maximum administrative

4-32 penalty permitted under Section 711.055 be imposed on the person

4-33 committing the violation or that the commissioner cancel or not

4-34 renew:

4-35 (1) the person's registration under Subchapter C-1, if

4-36 the person is registered under that subchapter; or

4-37 (2) the person's permit under Chapter 154, Finance

4-38 Code, if the person holds such a permit.

4-39 SECTION 9. Subchapter D, Chapter 711, Health and Safety

4-40 Code, is amended by adding Sections 711.057, 711.058, and 711.059

4-41 to read as follows:

4-42 Sec. 711.057. EMERGENCY ORDER. (a) The commissioner may

4-43 issue an emergency order that takes effect immediately if the

4-44 commissioner finds that immediate and irreparable harm is

4-45 threatened to the public or a beneficiary under a sale of the

4-46 exclusive right of sepulture in a plot.

4-47 (b) An emergency order remains in effect unless stayed by

4-48 the commissioner.

4-49 (c) The person named in the order may request in writing an

4-50 opportunity for a hearing to show that the emergency order should be

4-51 stayed. On receipt of the request, the commissioner shall set a

4-52 time for the hearing before the 22nd day after the date the

4-53 commissioner received the request, unless extended at the request

4-54 of the person named in the order.

4-55 (d) The hearing is an administrative hearing relating to the

4-56 validity of findings that support immediate effect of the order.

4-57 Sec. 711.058. RESTITUTION. The commissioner may issue an

4-58 order to a person requiring restitution if, after notice and

4-59 opportunity for hearing, the commissioner finds that the person:

4-60 (1) failed to remit a fee in accordance with Section

4-61 711.0381; or

4-62 (2) misappropriated, converted, or illegally withheld

4-63 or failed or refused to pay on demand money entrusted to the person

4-64 that belongs to a cemetery organization under an instrument of

4-65 conveyance.

4-66 Sec. 711.059. SEIZURE OF ACCOUNTS AND RECORDS. (a) The

4-67 commissioner may issue an order to seize accounts in which funds

4-68 from the sale or resale of the exclusive right of sepulture in a

4-69 plot, including earnings, may be held and may issue an order to

5-1 seize the records that relate to the sale or resale of the exclusive  
 5-2 right of sepulture in a plot if the commissioner finds, by  
 5-3 examination or other credible evidence, that the person:

5-4 (1) failed to remit a fee in accordance with Section  
 5-5 711.0381;

5-6 (2) misappropriated, converted, or illegally withheld  
 5-7 or failed or refused to pay on demand money entrusted to the person  
 5-8 that belongs to a cemetery organization under an instrument of  
 5-9 conveyance;

5-10 (3) refused to submit to examination by the  
 5-11 department;

5-12 (4) was the subject of an order to cancel, suspend, or  
 5-13 refuse a registration under Subchapter C-1; or

5-14 (5) is required to register under Subchapter C-1 and  
 5-15 is not registered or has transferred the ownership of the business  
 5-16 that required registration to another person who is not registered.

5-17 (b) An order shall be served on the person named in the order  
 5-18 by certified mail, return receipt requested, to the last known  
 5-19 address of the person.

5-20 (c) An order takes effect immediately and remains in effect  
 5-21 unless stayed by the commissioner, if the commissioner finds that  
 5-22 immediate and irreparable harm is threatened to the public or a  
 5-23 beneficiary under a sale of the exclusive right of sepulture in a  
 5-24 plot. If such a threat does not exist, the order must state the  
 5-25 effective date, which may not be before the 16th day after the date  
 5-26 the order is mailed.

5-27 (d) An emergency order remains in effect unless stayed by  
 5-28 the commissioner. The person named in the order may request in  
 5-29 writing an opportunity for a hearing to show that the emergency  
 5-30 order should be stayed. On receipt of the request, the commissioner  
 5-31 shall set a time before the 22nd day after the date the commissioner  
 5-32 received the request, unless extended at the request of the person  
 5-33 named in the order. The hearing is an administrative hearing  
 5-34 relating to the findings that support immediate effect of the  
 5-35 order.

5-36 (e) A nonemergency order takes effect as proposed unless the  
 5-37 person named in the order requests a hearing not later than the 15th  
 5-38 day after the date the order is mailed.

5-39 (f) After the issuance of an order under this section, the  
 5-40 commissioner may initiate an administrative claim for ancillary  
 5-41 relief, including a claim for:

5-42 (1) costs incurred in the administration, transfer, or  
 5-43 other disposition of the seized assets and records; or

5-44 (2) costs reasonably expected to be incurred in  
 5-45 connection with the administration and performance of any  
 5-46 outstanding certificate of ownership or other instrument of  
 5-47 conveyance that is a part of a sale by the person subject to the  
 5-48 order.

5-49 (g) The remedy provided by Subsection (f) is not exclusive.  
 5-50 The commissioner may seek an additional remedy authorized under  
 5-51 this subchapter.

5-52 SECTION 10. Chapter 711, Health and Safety Code, is amended  
 5-53 by adding Subchapter F to read as follows:

5-54 SUBCHAPTER F. POWERS AND DUTIES OF DEPARTMENT

5-55 RELATING TO CEMETERY BROKERS

5-56 Sec. 711.081. DEFINITIONS. In this subchapter:

5-57 (1) "Commission" means the Finance Commission of  
 5-58 Texas.

5-59 (2) "Commissioner" means the banking commissioner of  
 5-60 Texas.

5-61 (3) "Department" means the Texas Department of  
 5-62 Banking.

5-63 Sec. 711.082. ADMINISTRATION; FEES. (a) The department  
 5-64 shall administer Subchapters C and C-1 relating to cemetery  
 5-65 brokers.

5-66 (b) The commission may adopt reasonable rules concerning:

5-67 (1) fees to defray the cost of administering  
 5-68 Subchapters C and C-1;

5-69 (2) the retention and inspection of records relating

6-1 to the sale or resale of the exclusive right of sepulture in a plot;  
6-2 (3) changes in the management or control of a cemetery  
6-3 broker's business; and

6-4 (4) any other matter relating to the enforcement and  
6-5 administration of Subchapters C and C-1.

6-6 (c) A fee set by the commission may not produce unnecessary  
6-7 fund balances.

6-8 Sec. 711.083. RECORDS; EXAMINATION. (a) A person acting as  
6-9 a cemetery broker shall maintain records in accordance with this  
6-10 subchapter and Section 711.0381.

6-11 (b) The department shall examine the records of each person  
6-12 acting as a cemetery broker if the commissioner determines the  
6-13 examination is necessary to:

6-14 (1) safeguard the interests of purchasers and  
6-15 beneficiaries of the exclusive right of sepulture in a plot; and

6-16 (2) efficiently enforce applicable law.

6-17 (c) A person may maintain and provide a record required to  
6-18 be maintained under this section in an electronic format if the  
6-19 record is reliable and can be retrieved in a timely manner.

6-20 Sec. 711.084. EXAMINATION FEE. (a) For each examination  
6-21 conducted under Section 711.083, the commissioner or the  
6-22 commissioner's agent shall impose on the cemetery broker a fee in an  
6-23 amount set by the commission under Section 711.082.

6-24 (b) The amount of the fee must be sufficient to cover:

6-25 (1) the cost of the examination, including:

6-26 (A) salary and travel expenses for department  
6-27 employees, including travel to and from the place where the records  
6-28 are kept; and

6-29 (B) any other expense necessarily incurred in  
6-30 conducting the examination;

6-31 (2) the equitable or proportionate cost of maintaining  
6-32 and operating the department; and

6-33 (3) the cost of enforcing this subchapter.

6-34 SECTION 11. (a) Except as provided by Subsection (b) of  
6-35 this section, this Act takes effect immediately if it receives a  
6-36 vote of two-thirds of all the members elected to each house, as  
6-37 provided by Section 39, Article III, Texas Constitution. Except as  
6-38 provided by Subsection (b) of this section, if this Act does not  
6-39 receive the vote necessary for immediate effect, this Act takes  
6-40 effect September 1, 2013.

6-41 (b) Section 711.0381 and Subchapter C-1, Chapter 711,  
6-42 Health and Safety Code, as added by this Act, take effect January 1,  
6-43 2014.

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