

By: Rodriguez of Travis

H.B. No. 1472

A BILL TO BE ENTITLED

AN ACT

relating to jurisdiction over the removal of remains.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF TEXAS:

SECTION 1. Section 711.004, Health and Safety Code, is amended to read as follows:

Sec. 711.004. REMOVAL OF REMAINS. (a) Remains interred in a cemetery may be removed from a plot in the cemetery with the written consent of the cemetery organization operating the cemetery and the written consent of the current plot owner or owners and the following persons, in the priority listed:

(1) the decedent's surviving spouse;

(2) the decedent's surviving adult children;

(3) the decedent's surviving parents;

(4) the decedent's adult siblings; or

(5) the adult person in the next degree of kinship in the order named by law to inherit the estate of the decedent.

(b) A person listed in Subsection (a) may consent to the removal only if there is no person in a priority listed before that person.

(c) If the consent required by Subsection (a) cannot be obtained, the remains may be removed by permission of the statutory probate court of the county in which the cemetery is located, or, if there is not a statutory probate court in that county, then in a district court of the county in which the cemetery is located.

1 Before the date of application to the court for permission to remove
2 remains under this subsection, notice must be given to:

3 (1) the cemetery organization operating the cemetery
4 in which the remains are interred or if the cemetery organization
5 cannot be located or does not exist, the Texas Historical
6 Commission;

7 (2) each person whose consent is required for removal
8 of the remains under Subsection (a); and

9 (3) any other person that the court requires to be
10 served.

11 (d) For the purposes of Subsection (c) and except as
12 provided by this subsection or Subsection (k), personal notice must
13 be given not later than the 11th day before the date of application
14 to the court for permission to remove the remains, or notice by
15 certified or registered mail must be given not later than the 16th
16 day before the date of application. In an emergency circumstance
17 described by Subsection (l) that necessitates immediate removal of
18 remains from a plot, the court shall hear an application for
19 permission to remove remains under Subsection (c) not later than
20 the first business day after the application is made. In an
21 emergency circumstance described by this subsection, personal
22 notice may be given on the date the application is made.

23 (e) Subsections (a)-(d) and (k) do not apply to the removal
24 of remains:

25 (1) from one plot to another plot in the same cemetery,
26 if the cemetery:

27 (A) is a family, fraternal, or community cemetery

1 that is not larger than 10 acres;

2 (B) is owned or operated by an unincorporated
3 association of plot owners not operated for profit;

4 (C) is owned or operated by a church, a religious
5 society or denomination, or an entity solely administering the
6 temporalities of a church or religious society or denomination; or

7 (D) is a public cemetery owned by this state, a
8 county, or a municipality;

9 (2) by the cemetery organization from a plot for which
10 the purchase price is past due and unpaid, to another suitable
11 place;

12 (3) on the order of a court or person who conducts
13 inquests; or

14 (4) from a plot in a cemetery owned and operated by the
15 Veterans' Land Board.

16 (f) Except as is authorized for a justice of the peace
17 acting as coroner or medical examiner under Chapter 49, Code of
18 Criminal Procedure, remains may not be removed from a cemetery
19 except on the written order of the state registrar or the state
20 registrar's designee. The cemetery organization shall keep a
21 duplicate copy of the order as part of its records. The Texas
22 Funeral Service Commission may adopt rules to implement this
23 subsection.

24 (g) A person who removes remains from a cemetery shall keep
25 a record of the removal that includes:

26 (1) the date the remains are removed;

27 (2) the name and age at death of the decedent if those

1 facts can be conveniently obtained;

2 (3) the place to which the remains are removed; and

3 (4) the cemetery and plot from which the remains are
4 removed.

5 (h) If the remains are not reinterred, the person who
6 removes the remains shall:

7 (1) make and keep a record of the disposition of the
8 remains; and

9 (2) not later than the 30th day after the date the
10 remains are removed, provide notice by certified mail to the Texas
11 Funeral Service Commission and the Department of State Health
12 Services of the person's intent not to reinter the remains and the
13 reason the remains will not be reinterred.

14 (i) A person who removes remains from a cemetery shall give
15 the cemetery organization operating the cemetery a copy of the
16 record made as required by Subsections (g) and (h).

17 (j) A cemetery organization may remove remains from a plot
18 in the cemetery and transfer the remains to another plot in the same
19 cemetery without the written consent required under Subsection (a)
20 if the cemetery seeks consent by sending written notice by
21 certified mail, return receipt requested, to the last known address
22 of the current owner of the plot from which the remains are to be
23 removed or to the person designated under Subsection (a). The
24 notice must indicate that the remains will be removed, the reason
25 for the removal of the remains, and the proposed location of the
26 reinterment of the remains. The cemetery may transfer the remains
27 to another plot in accordance with this subsection if an objection

1 is not received in response to the notice before the 31st day after
2 the date the notice is sent. A cemetery may not remove remains
3 under this subsection for a fraudulent purpose or to allow the sale
4 of the plot in which the remains are located to another person.

5 (k) In an emergency circumstance described by Subsection
6 (l) that necessitates immediate removal of remains before the date
7 on which the court is required to hear an application for permission
8 to remove remains under Subsection (d), a cemetery organization may
9 remove remains from a plot in the cemetery and transfer the remains
10 to another plot in the same cemetery without the court hearing. A
11 cemetery association that removes remains under this subsection
12 shall send written notice of the removal by certified mail, return
13 receipt requested, to the last known address of the person
14 designated under Subsection (a) not later than the fifth day after
15 the date the remains are removed. The notice must indicate that the
16 remains were removed, the reason for the removal of the remains, and
17 the location of the reinterment of the remains.

18 (l) For purposes of Subsections (d) and (k), "emergency
19 circumstance" means:

- 20 (1) a natural disaster; or
21 (2) an error in the interment of remains.