

By: Laubenberg

H.B. No. 2879

A BILL TO BE ENTITLED

AN ACT

relating to cemeteries and perpetual care cemetery corporations;
creating an offense.

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

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 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 to read as follows:

(a) The Finance Commission of Texas may adopt rules to enforce and administer Sections 711.003, 711.004, 711.007, 711.008, 711.0105, 711.021-711.024, 711.032-711.036, 711.038, 711.040-711.042, 711.052, 711.061, 711.063, and 711.064 [~~711.062~~] relating to perpetual care cemeteries.

1 (b) The Texas Funeral Service Commission may adopt rules,
2 establish procedures, and prescribe forms to enforce and administer
3 Sections 711.003, 711.008, 711.0105, 711.021-711.034, 711.038,
4 711.0395, 711.041, 711.042, 711.052, 711.061, 711.063, and 711.064
5 [~~711.062~~] relating to cemeteries that are not perpetual care
6 cemeteries.

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

10 (b) A corporation conducting a business for cemetery
11 purposes, including the sale of plots, may be formed only as
12 provided by this section. The corporation must be a filing entity
13 or foreign filing entity that is a private for-profit corporation
14 or nonprofit corporation, as those terms are defined by Section
15 1.002, Business Organizations Code [~~either:~~

16 [~~(1) a nonprofit corporation organized in accordance~~
17 ~~with Section A or B, Article 3.01, Texas Non-Profit Corporation Act~~
18 ~~(Article 1396-3.01, Vernon's Texas Civil Statutes), or with Section~~
19 ~~711.022; or~~

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

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

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

27 (e) The certificate or declaration may contain a provision

1 permitting the directors by order to resurvey and change the shape
2 and size of the property for which the associated map or plat is
3 filed if that change does not disturb any interred remains. Except
4 as provided by Subsection (e-1), if [~~If~~] a change is made, the
5 cemetery organization shall:

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

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

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

13 (1) the only change to the property is:

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

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

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

21 SECTION 5. Sections 711.051(a) and (c), Health and Safety
22 Code, are amended to read as follows:

23 (a) A cemetery corporation that violates this chapter or
24 Chapter 712 forfeits the corporation's charter and right to do
25 business in this state unless the corporation corrects the
26 violation before the 30th [~~91st~~] day after the date of receiving
27 notice of the violation from the attorney general.

1 (c) If the violation is not corrected before the 30th [~~91st~~]
2 day after the date of the notice, the attorney general shall bring
3 suit or quo warranto proceedings for the forfeiture of the
4 corporation's charter and dissolution of the corporation in a [~~the~~]
5 district court of Travis County or of any county in which the
6 violation occurred.

7 SECTION 6. Sections 711.052(a) and (d), Health and Safety
8 Code, are amended to read as follows:

9 (a) A person who is an individual, firm, association,
10 corporation, or municipality, or an officer, agent, or employee of
11 an individual, firm, association, corporation, or municipality,
12 commits an offense if the person:

13 (1) engages in a business for cemetery purposes in
14 this state other than through a corporation organized for that
15 purpose, if a corporation is required by law;

16 (2) fails or refuses to keep records of interment as
17 required by Sections 711.003 and 711.004;

18 (3) sells, offers to sell, or advertises for sale a
19 plot or the exclusive right of sepulture in a plot for purposes of
20 speculation or investment; [~~or~~]

21 (4) represents through advertising or printed
22 material that a retail department will be established for the
23 resale of the plots of plot purchasers, that specific improvements
24 will be made in the cemetery, or that specific merchandise or
25 services will be furnished to a plot owner, unless adequate funds or
26 reserves are created by the cemetery organization for the
27 represented purpose;

1 (5) makes more than one interment in a plot in a
2 cemetery operated by a cemetery organization other than as provided
3 by Section 711.0395; or

4 (6) removes remains from a plot in a cemetery operated
5 by a cemetery organization without complying with Section 711.004.

6 (d) Except as provided by this subsection, an [An] offense
7 under this section is a Class A misdemeanor. An offense under
8 Subsection (a)(5) or (6) is a felony of the second degree.

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

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

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

15 (2) \$75,000 in capital for each certificate of
16 authority to operate a perpetual care cemetery issued to the
17 corporation on or after September 1, 2013.

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

22 SECTION 8. Section 712.0039(b), Health and Safety Code, is
23 amended to read as follows:

24 (b) If the proposed transferee would own more than 50
25 percent of the stock or other ownership or membership interest of
26 the corporation and is not a certificate holder, the proposed
27 transferee shall file any necessary documents with the secretary of

1 state and an application for a certificate of authority with the
2 department as required by this chapter. If the proposed transferee
3 is required to apply for a certificate of authority under this
4 subsection, the [~~The~~] transfer of the perpetual care fund may not
5 occur until after the date a certificate of authority is issued to
6 the transferee applicant.

7 SECTION 9. Section 712.0441(g), Health and Safety Code, is
8 amended to read as follows:

9 (g) If a violation described in Subsection (a) has not been
10 corrected before the 31st day after the date the corporation
11 receives [~~with 90 days after the receipt of~~] written notice [~~by the~~
12 ~~corporation~~] from the commissioner of the violation, the
13 commissioner may report the violation to the attorney general, who
14 shall bring suit or quo warranto proceedings for the forfeiture of
15 the corporation's charter and dissolution of the corporation in a
16 [~~the~~] district court of Travis County or of any county in which the
17 corporation's [~~its~~] perpetual care cemetery is operated.

18 SECTION 10. Sections 711.051(a) and (c) and 712.0441(g),
19 Health and Safety Code, as amended by this Act, apply only to a
20 violation that occurs on or after the effective date of this Act. A
21 violation that occurs before the effective date of this Act is
22 governed by the law applicable to the violation immediately before
23 that date, and the former law is continued in effect for that
24 purpose.

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