

By: Carona

S.B. No. 661

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 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. Subsections (a) and (b), Section 711.012, 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, as those terms are defined by Section
14 1.002, Business Organizations Code ~~[either:~~

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

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

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

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

26 (e) The certificate or declaration may contain a provision
27 permitting the directors by order to resurvey and change the shape

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

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

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

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

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

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

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

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

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

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

27 (c) If the violation is not corrected before the 30th ~~91st~~

1 day after the date of the notice, the attorney general shall bring
2 suit or quo warranto proceedings for the forfeiture of the
3 corporation's charter and dissolution of the corporation in a [the]
4 district court of Travis County or of any county in which the
5 violation occurred.

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

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

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

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

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

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

27 (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; or

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

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

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. Subsection (b), Section 712.0039, Health and Safety Code, is amended to read as follows:

(b) 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, the proposed transferee shall file any necessary documents with the secretary of state and an application for a certificate of authority with the

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

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

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

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

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