

## **BILL ANALYSIS**

Senate Research Center

S.B. 656  
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Business & Commerce  
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Enrolled

### **AUTHOR'S / SPONSOR'S STATEMENT OF INTENT**

Chapter 712 of the Health and Safety Code applies to perpetual care cemeteries. Perpetual care cemeteries are regulated by the Banking Department of Texas.

S.B. 656 proposes changes to Chapter 712 to authorize the banking commissioner of Texas (commissioner) to petition a court to modify or terminate a perpetual care trust fund if the income is insufficient to maintain the cemetery and no source for additional contributions can be located. The court could authorize a city, county, non-profit or other appropriate person to assume those funds to maintain the cemetery.

Additionally, changes are made to broaden the commissioner's authority to bring injunctive actions and to clarify the procedures governing emergency orders.

S.B. 656 amends current law relating to perpetual care cemeteries.

### **RULEMAKING AUTHORITY**

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

### **SECTION BY SECTION ANALYSIS**

SECTION 1. Amends Subchapter B, Chapter 712, Health and Safety Code, by adding Section 712.020, as follows:

Sec. 712.020. CONFLICT WITH OTHER LAW. Provides that, to the extent of any conflict between this subchapter and Subtitle B (Texas Trust Code: Creation, Operation, and Termination of Trusts), Title 9, Property Code, this subchapter controls.

SECTION 2. Amends Section 712.021(b), Health and Safety Code, to create an exception under Section 712.0255.

SECTION 3. Amends Subchapter B, Chapter 712, Health and Safety Code, by adding Section 712.0255, as follows:

Sec. 712.0255. JUDICIAL MODIFICATION OR TERMINATION OF FUND. (a) Authorizes the banking commissioner of Texas (commissioner) to petition a court to modify or terminate a fund under Section 112.054 (Judicial Modification or Termination of Trusts), Property Code. Authorizes the commissioner, in addition to the grounds described by that section, to petition a court under that section if the income from the fund is inadequate to maintain, repair, and care for the perpetual care cemetery and another source for providing additional contributions to the fund is unavailable.

(b) Provides that, if feasible, the corporation for the perpetual care cemetery and the trustee of the fund are necessary parties to an action described by this section. Prohibits a court from modifying or terminating the fund without the consent of the commissioner.

(c) Authorizes the court to order the distribution and transfer of all or a portion of the assets in the fund to a nonprofit corporation, municipality, county, or other appropriate person who is willing to accept, continue to care for, and maintain the perpetual care cemetery at the request or with the consent of the commissioner. Provides that a transfer under this subsection does not limit the court's ability to modify or terminate the fund under an action described by this section.

SECTION 4. Amends Section 712.0441(d), Health and Safety Code, to change references to corporation to person and to authorize a certain civil action to be brought in a district court of Travis County or a county in which the perpetual care cemetery, rather than the corporation's perpetual care cemetery, is operated.

SECTION 5. Amends Section 712.0444, Health and Safety Code, by adding Subsections (a-1) and (d) and amending Subsections (b) and (c), as follows:

(a-1) Requires an emergency order to state the grounds on which the order is granted; advise the person against whom the order is directed that the order takes effect immediately; require the person to, to the extent applicable, immediately cease and desist from the conduct or violation that is the basis of the order or take the affirmative action stated in the order as necessary to correct a condition resulting from the conduct or violation that is the basis of the order or as otherwise appropriate; be delivered by personal delivery or sent by certified mail, return receipt requested, to the person at the person's last known address; and notify the person against whom the order is directed that the person is authorized to request a hearing on the order by filing a written request for a hearing with the commissioner not later than the 18th day after the date the order is delivered or mailed, whichever is earlier.

(b) Provides that the emergency order takes effect as soon as the person against whom the order is directed has actual or constructive knowledge of the issuance of the order. Provides that an emergency order remains in effect unless stayed by the commissioner.

(c) Authorizes the person named in the emergency order to request in writing, not later than the 18th day after the date the order is delivered or mailed, whichever is earlier, a hearing to show that the emergency order should be stayed.

(d) Provides that, unless the commissioner receives a written request for a hearing in accordance with Subsection (c), the order is final on the 19th day after the date the order is delivered or mailed, whichever is earlier, and prohibits the order from being appealed.

SECTION 6. Effective date: upon passage or September 1, 2015.