

By: Eltife

S.B. No. 656

A BILL TO BE ENTITLED

AN ACT

relating to perpetual care cemeteries.

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

SECTION 1. Subchapter B, Chapter 712, Health and Safety Code, is amended by adding Section 712.020 to read as follows:

Sec. 712.020. CONFLICT WITH OTHER LAW. To the extent of any conflict between this subchapter and Subtitle B, Title 9, Property Code, this subchapter controls.

SECTION 2. Section 712.021(b), Health and Safety Code, is amended to read as follows:

(b) Except as provided by Section 712.0255, the ~~[The]~~ principal of the fund may not be reduced voluntarily, and it must remain inviolable. The trustee shall maintain the principal of the fund separate from all operating funds of the corporation.

SECTION 3. Subchapter B, Chapter 712, Health and Safety Code, is amended by adding Section 712.0255 to read as follows:

Sec. 712.0255. JUDICIAL MODIFICATION OR TERMINATION OF FUND. (a) The commissioner may petition a court to modify or terminate a fund under Section 112.054, Property Code. In addition to the grounds described by that section, the commissioner may 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.

1       (b) If feasible, the corporation for the perpetual care  
2 cemetery and the trustee of the fund are necessary parties to an  
3 action described by this section. A court may not modify or  
4 terminate the fund without the consent of the commissioner.

5       (c) At the request or with the consent of the commissioner,  
6 the court may order the distribution and transfer of all or a  
7 portion of the assets in the fund to a nonprofit corporation,  
8 municipality, county, or other appropriate person who is willing to  
9 accept, continue to care for, and maintain the perpetual care  
10 cemetery. A transfer under this subsection does not limit the  
11 court's ability to modify or terminate the fund under an action  
12 described by this section.

13       SECTION 4. Section 712.0441(d), Health and Safety Code, is  
14 amended to read as follows:

15       (d) In addition to any penalty that may be imposed under  
16 Subsection (a), the commissioner may bring a civil action against a  
17 person [~~corporation~~] to enjoin a violation described in Subsection  
18 (a) that has not been corrected within 30 days after the receipt by  
19 the person [~~corporation~~] of written notice from the commissioner of  
20 the violation. Any such civil action may be brought in a a [~~the~~]  
21 district court of Travis County or a [~~the~~] county in which the  
22 [~~corporation's~~] perpetual care cemetery is operated.

23       SECTION 5. Section 712.0444, Health and Safety Code, is  
24 amended by adding Subsections (a-1) and (d) and amending  
25 Subsections (b) and (c) to read as follows:

26       (a-1) An emergency order must:

27               (1) state the grounds on which the order is granted;

1           (2) advise the person against whom the order is  
2 directed that the order takes effect immediately;

3           (3) to the extent applicable, require the person to:

4                   (A) immediately cease and desist from the conduct  
5 or violation that is the basis of the order; or

6                   (B) take the affirmative action stated in the  
7 order as necessary to correct a condition resulting from the  
8 conduct or violation that is the basis of the order or as otherwise  
9 appropriate;

10           (4) be delivered by personal delivery or sent by  
11 certified mail, return receipt requested, to the person at the  
12 person's last known address; and

13           (5) notify the person against whom the order is  
14 directed that the person may request a hearing on the order by  
15 filing a written request for a hearing with the commissioner not  
16 later than the 18th day after the date the order is delivered or  
17 mailed, whichever is earlier.

18           (b) The emergency order takes effect as soon as the person  
19 against whom the order is directed has actual or constructive  
20 knowledge of the issuance of the order. An emergency order remains  
21 in effect unless stayed by the commissioner.

22           (c) The person named in the emergency order may request in  
23 writing, not later than the 18th day after the date the order is  
24 delivered or mailed, whichever is earlier, a hearing to show that  
25 the emergency order should be stayed. On receipt of the request,  
26 the commissioner shall set a time for the hearing not later than the  
27 21st day after the date the commissioner received the request,

1 unless extended at the request of the person named in the order.

2 (d) Unless the commissioner receives a written request for a  
3 hearing in accordance with Subsection (c), the order is final on the  
4 19th day after the date the order is delivered or mailed, whichever  
5 is earlier, and may not be appealed.

6 SECTION 6. This Act takes effect immediately if it receives  
7 a vote of two-thirds of all the members elected to each house, as  
8 provided by Section 39, Article III, Texas Constitution. If this  
9 Act does not receive the vote necessary for immediate effect, this  
10 Act takes effect September 1, 2015.