

By: Howard

H.B. No. 3265

Substitute the following for H.B. No. 3265:

By: Gervin-Hawkins

C.S.H.B. No. 3265

A BILL TO BE ENTITLED

AN ACT

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relating to cemeteries.

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

SECTION 1. Section 711.001, Health and Safety Code, is amended to read as follows:

Sec. 711.001. DEFINITIONS. In this chapter:

(1) "Abandoned cemetery" means a cemetery, regardless of whether it appears on a map or in deed records, that is not owned or operated by a cemetery organization, does not have another person legally responsible for its care, and is not maintained by any person.

(2) [~~(1)~~] "Burial park" means a tract of land that is used or intended to be used for interment in graves.

(3) [~~(1-a)~~] "Campus" means the area:

- (A) within the boundaries of one or more adjacent tracts, parcels, or lots under common ownership;
- (B) on which the principal church building and related structures and facilities of an organized religious society or sect are located; and
- (C) that may be subject to one or more easements for street, utility, or pipeline purposes.

(4) [~~(2)~~] "Cemetery" means a place that is used or intended to be used for interment, and includes a graveyard, burial park, mausoleum, or any other area containing one or more graves.

1           (5) [~~(2-a)~~] "Cemetery element" means a grave,  
2 memorial, crypt, mausoleum, columbarium, or other item that is  
3 associated with the cemetery, including a fence, road, curb, wall,  
4 path, gate, or bench and the lighting and landscaping.

5           (6) [~~(2-b)~~] "Cemetery broker" means a person who sells  
6 the exclusive right of sepulture for another person. The term does  
7 not include a person who:

8                   (A) is an officer, agent, or employee of the  
9 cemetery organization in which the plot is located and who is exempt  
10 from registration under Subchapter C-1; or

11                   (B) originally purchased the exclusive right of  
12 sepulture for personal use.

13           (7) [~~(3)~~] "Cemetery organization" means:

14                   (A) an unincorporated association of plot owners  
15 not operated for profit that is authorized by its articles of  
16 association to conduct a business for cemetery purposes; or

17                   (B) a corporation, as defined by Section  
18 [712.001\(b\)\(3\)](#), that is authorized by its certificate of formation  
19 or its registration to conduct a business for cemetery purposes.

20           (8) [~~(4)~~] "Cemetery purpose" means a purpose  
21 necessary or incidental to establishing, maintaining, managing,  
22 operating, improving, or conducting a cemetery, interring remains,  
23 or caring for, preserving, and embellishing cemetery property.

24           (9) [~~(5)~~] "Columbarium" means a durable, fireproof  
25 structure, or a room or other space in a durable, fireproof  
26 structure, containing niches and used or intended to be used to  
27 contain cremated remains.

1           (10) [~~(5-a)~~] "Cremains receptacle" means a marker,  
2 boulder, bench, pedestal, pillar, or other aboveground vessel that  
3 contains niches for cremated remains.

4           (11) [~~(6)~~] "Cremated remains" or "cremains" means the  
5 bone fragments remaining after the cremation process, which may  
6 include the residue of any foreign materials that were cremated  
7 with the human remains.

8           (12) [~~(7)~~] "Cremation" means the irreversible process  
9 of reducing human remains to bone fragments through extreme heat  
10 and evaporation, which may include the processing or the  
11 pulverization of bone fragments.

12           (13) [~~(8)~~] "Crematory" means a structure containing a  
13 furnace used or intended to be used for the cremation of human  
14 remains.

15           (14) [~~(9)~~] "Crematory and columbarium" means a  
16 durable, fireproof structure containing both a crematory and  
17 columbarium.

18           (15) [~~(10)~~] "Crypt" means a chamber in a mausoleum of  
19 sufficient size to inter human remains.

20           (16) [~~(11)~~] "Directors" means the governing body of a  
21 cemetery organization.

22           (17) [~~(12)~~] "Entombment" means interment in a crypt.

23           (18) [~~(13)~~] "Funeral establishment" means a place of  
24 business used in the care and preparation for interment or  
25 transportation of human remains, or any place where one or more  
26 persons, either as sole owner, in copartnership, or through  
27 corporate status, are engaged or represent themselves to be engaged

1 in the business of embalming or funeral directing.

2           (19) [~~(14)~~] "Grave" means a space of ground that  
3 contains interred human remains or is in a burial park and that is  
4 used or intended to be used for interment of human remains in the  
5 ground.

6           (20) [~~(15)~~] "Human remains" means the body of a  
7 decedent.

8           (21) [~~(16)~~] "Interment" means the permanent  
9 disposition of remains by entombment, burial, or placement in a  
10 niche.

11           (22) [~~(17)~~] "Interment right" means the right to inter  
12 the remains of one decedent in a plot.

13           (23) [~~(18)~~] "Inurnment" means the placement of  
14 cremated remains in an urn.

15           (24) [~~(19)~~] "Lawn crypt" means a subsurface  
16 receptacle installed in multiple units for ground burial of human  
17 remains.

18           (25) [~~(20)~~] "Mausoleum" means a durable, fireproof  
19 structure used or intended to be used for entombment.

20           (26) [~~(20-a)~~] "Memorial" means a headstone,  
21 tombstone, gravestone, monument, or other marker denoting a grave.

22           (27) [~~(21)~~] "Niche" means a space in a columbarium or  
23 cremains receptacle used or intended to be used for the placement of  
24 cremated remains in an urn or other container.

25           (28) [~~(22)~~] "Nonperpetual care cemetery" means a  
26 cemetery that is not a perpetual care cemetery.

27           (29) [~~(23)~~] "Perpetual care" or "endowment care"

1 means the maintenance, repair, and care of all places in the  
2 cemetery.

3 (30) [~~(24)~~] "Perpetual care cemetery" or "endowment  
4 care cemetery" means a cemetery for the benefit of which a perpetual  
5 care trust fund is established as provided by Chapter 712.

6 (31) [~~(25)~~] "Plot" means space in a cemetery owned by  
7 an individual or organization that is used or intended to be used  
8 for interment, including a grave or adjoining graves, a crypt or  
9 adjoining crypts, a lawn crypt or adjoining lawn crypts, or a niche  
10 or adjoining niches.

11 (32) [~~(26)~~] "Plot owner" means a person:

12 (A) in whose name a plot is listed in a cemetery  
13 organization's office as the owner of the exclusive right of  
14 sepulture; or

15 (B) who holds, from a cemetery organization, a  
16 certificate of ownership or other instrument of conveyance of the  
17 exclusive right of sepulture in a particular plot in the  
18 organization's cemetery.

19 (33) [~~(27)~~] "Prepaid funeral contract" means a  
20 written contract providing for prearranged or prepaid funeral  
21 services or funeral merchandise.

22 (34) [~~(28)~~] "Remains" means either human remains or  
23 cremated remains.

24 (35) "Unidentified grave" means a grave that is not  
25 marked in a manner that provides the identity of the interment.

26 (36) "Unknown cemetery" means an abandoned cemetery  
27 evidenced by the presence of marked or unmarked graves that does not

1 appear on a map or in deed records.

2 (37) "Unmarked grave" means the immediate area where  
3 one or more human interments are found that:

4 (A) is not in a recognized and maintained  
5 cemetery;

6 (B) is not owned or operated by a cemetery  
7 organization;

8 (C) is not marked by a tomb, monument,  
9 gravestone, or other structure or thing placed or designated as a  
10 memorial of the dead; or

11 (D) is located on land designated as  
12 agricultural, timber, recreational, park, or scenic land under  
13 Chapter 23, Tax Code.

14 (38) "Unverified cemetery" means a location having  
15 some evidence of interment but in which the presence of one or more  
16 unmarked graves has not been verified by a person described by  
17 Section 711.0105(a) or by the Texas Historical Commission.

18 SECTION 2. Section 711.004, Health and Safety Code, is  
19 amended by adding Subsection (f-1) to read as follows:

20 (f-1) For unmarked graves contained within an abandoned,  
21 unknown, or unverified cemetery, a justice of the peace acting as  
22 coroner or medical examiner under Chapter 49, Code of Criminal  
23 Procedure, or a person described by Section 711.0105(a) may  
24 investigate or remove remains without written order of the state  
25 registrar or the state registrar's designee.

26 SECTION 3. The heading to Section 711.010, Health and  
27 Safety Code, is amended to read as follows:

1           Sec. 711.010. ABANDONED,           UNKNOWN,           OR           UNVERIFIED  
2 ~~[ABANDONED]~~ CEMETERY.

3           SECTION 4. Section 711.010, Health and Safety Code, is  
4 amended by amending Subsections (a) and (b) and adding Subsection  
5 (d) to read as follows:

6           (a) The owner of property on which an unknown cemetery is  
7 discovered or on which an abandoned cemetery is located may not  
8 construct improvements on the property in a manner that would  
9 ~~[further]~~ disturb the cemetery until the human remains interred in  
10 the cemetery are removed under a written order issued by the state  
11 registrar or the state registrar's designee under Section  
12 711.004(f) and under an order of a district court as provided by  
13 this section, except as provided by Section 711.004(f-1).

14           (b) On petition of the owner of the property, a district  
15 court of the county in which an unknown cemetery is discovered or an  
16 abandoned cemetery is located may order the removal of any  
17 dedication for cemetery purposes that affects the property if the  
18 court finds that the removal of the dedication is in the public  
19 interest. If a court orders the removal of a dedication of a  
20 cemetery and all human remains in that cemetery ~~[on the property]~~  
21 have not previously been removed, the court shall order the removal  
22 of the human remains from the cemetery to a perpetual care cemetery  
23 or a municipal or county cemetery.

24           (d) The Texas Historical Commission, with consent of the  
25 landowner, may investigate a suspected but unverified cemetery or  
26 may delegate the investigation to a qualified person described by  
27 Section 711.0105(a).

1 SECTION 5. The heading to Section 711.011, Health and  
2 Safety Code, is amended to read as follows:

3 Sec. 711.011. FILING RECORD OF UNKNOWN OR ABANDONED  
4 CEMETERY.

5 SECTION 6. Section 711.011(a), Health and Safety Code, is  
6 amended to read as follows:

7 (a) A person who discovers an unknown or abandoned cemetery  
8 shall file notice of the discovery of the cemetery with the county  
9 clerk of the county in which the cemetery is located and  
10 concurrently mail notice to the landowner on record in the county  
11 appraisal district not later than the 10th day after the date of the  
12 discovery. The notice must contain a legal description of the land  
13 on which the unknown or abandoned cemetery was found and describe  
14 the approximate location of the cemetery and the evidence of the  
15 cemetery that was discovered.

16 SECTION 7. Subchapter A, Chapter 711, Health and Safety  
17 Code, is amended by adding Section 711.0111 to read as follows:

18 Sec. 711.0111. NOTICE OF UNVERIFIED CEMETERY. (a) A person  
19 who discovers an unverified cemetery shall file notice and evidence  
20 of the discovery with the Texas Historical Commission on a form  
21 provided by the Texas Historical Commission, and shall concurrently  
22 provide a copy of the notice to the landowner on record in the  
23 county appraisal district on whose land the unverified cemetery is  
24 located.

25 (b) The landowner described by Subsection (a) may send a  
26 response or comments to the Texas Historical Commission concerning  
27 the notice not later than the 30th day after the date the notice is



1 filed.

2 (c) The Texas Historical Commission shall evaluate the  
3 notice of the unverified cemetery, the evidence submitted with the  
4 notice, and the response of the landowner, if any, and shall  
5 determine whether there is sufficient evidence of the existence of  
6 a cemetery.

7 (d) If the Texas Historical Commission determines  
8 sufficient evidence supports the existence of a cemetery, the Texas  
9 Historical Commission shall inform the landowner and may file  
10 notice of the existence of the cemetery under Section 711.011.

11 (e) If the Texas Historical Commission determines  
12 sufficient evidence supports a determination that a cemetery does  
13 not exist, the Texas Historical Commission shall notify the  
14 landowner on record in the appraisal district of its determination,  
15 amend the notice to include the commission's determination, and  
16 ensure any notice filed with a county clerk under Section 711.011 is  
17 corrected.

18 SECTION 8. Section 711.041, Health and Safety Code, is  
19 amended by adding Subsection (d) to read as follows:

20 (d) This section does not apply to an unverified cemetery.

21 SECTION 9. Section 712.0441(f-1), Health and Safety Code,  
22 is amended to read as follows:

23 (f-1) The commissioner may issue an order requiring  
24 restitution by a person if, after notice and opportunity for a  
25 hearing held in accordance with the procedures for a contested case  
26 hearing under Chapter 2001, Government Code, the commissioner finds  
27 that the corporation has not ordered memorials, as defined by

1 Section 711.001 [~~711.001(20-a)~~], in compliance with the deadlines  
2 established by rules adopted under this chapter.

3 SECTION 10. This Act takes effect September 1, 2017.