

By: Campbell
(Dean, Parker)

S.B. No. 1402

A BILL TO BE ENTITLED

AN ACT

relating to the regulation of cemeteries and the administration of perpetual care trust funds.

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

SECTION 1. Section 711.056(a), Health and Safety Code, is amended to read as follows:

(a) If after a hearing conducted as provided by Chapter 2001, Government Code, the trier of fact finds that a violation of this chapter or a rule of the Finance Commission of Texas establishes a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission, the trier of fact may [~~shall~~] recommend to the commissioner that the maximum administrative penalty permitted under Section 711.055 be imposed on the person committing the violation or that the commissioner cancel or not renew:

(1) the person's registration under Subchapter C-1, if the person is registered under that subchapter; or

(2) the person's permit under Chapter 154, Finance Code, if the person holds such a permit.

SECTION 2. Section 712.0034, Health and Safety Code, is amended by amending Subsection (b) and adding Subsection (c) to read as follows:

(b) To qualify for a certificate of authority under this chapter, an applicant must demonstrate to the satisfaction of the

1 commissioner that:

2 (1) the applicant's business ability, experience,
3 character, financial condition, and general fitness warrant the
4 public's confidence;

5 (2) the cemetery operations manager has at least two
6 years of experience in cemetery management;

7 (3) the issuance of the certificate of authority is in
8 the public interest;

9 (4) the applicant, a principal of the applicant, or a
10 person who controls the applicant does not owe the department a
11 delinquent fee, assessment, administrative penalty, or other
12 amount imposed under this chapter or a rule adopted or order issued
13 under this chapter; and

14 (5) the applicant corporation:

15 (A) is in good standing and statutory compliance
16 with this state;

17 (B) is authorized to engage in the perpetual care
18 cemetery business in this state; ~~and~~

19 (C) does not owe any delinquent franchise or
20 other taxes to this state; and

21 (D) wholly owns all land on which the perpetual
22 care cemetery will be located.

23 (c) For purposes of Subsection (b)(5)(D), an applicant
24 corporation is considered to wholly own land regardless of whether
25 the land is subject to a mortgage, deed of trust, or other lien.

26 SECTION 3. Section 712.0037, Health and Safety Code, is
27 amended by adding Subsections (a-1) and (a-2) to read as follows:

1 (a-1) Notwithstanding Subsection (a), a certificate holder
2 holding a certificate of authority issued before September 1, 2017,
3 that does not on that date satisfy the ownership requirement under
4 Section 712.0034(b)(5)(D) is not required to satisfy that ownership
5 requirement as a condition of renewal until September 1, 2022. The
6 commissioner may extend the period of compliance for the ownership
7 requirement if the certificate holder:

8 (1) files a written application for the extension in
9 the form and manner required by the department; and

10 (2) shows good cause for the extension.

11 (a-2) This subsection and Subsection (a-1) expire September
12 1, 2028.

13 SECTION 4. Section 712.021, Health and Safety Code, is
14 amended by amending Subsections (a) and (g) and adding Subsection
15 (h) to read as follows:

16 (a) Except as provided by Subsection (h), a [A] corporation
17 that operates a perpetual care cemetery in this state shall have a
18 fund established with a trust company or a bank with trust powers
19 that is located in this state. The trust company or bank may not
20 have more than one director who is also a director of the
21 corporation.

22 (g) In this subsection, "master trust account" means an
23 account containing the perpetual care trust funds of two or more
24 certificate holders for the purpose of collective investment and
25 administration. The trustors of two or more perpetual care trust
26 funds may establish a master ~~[common]~~ trust account ~~[fund]~~ in which
27 deposits required by this chapter are made, provided that separate

1 records of principal and income are maintained for each perpetual
2 care cemetery for the benefit of which the master [~~common~~] trust
3 account [~~fund~~] is established, and further provided that the income
4 attributable to each perpetual care cemetery is used only for the
5 perpetual care of that cemetery.

6 (h) A corporation may apply to the commissioner for
7 temporary relief and placement of a perpetual care trust fund in a
8 segregated interest bearing account at a Texas financial
9 institution, as defined by Section 201.101, Finance Code, if the
10 corporation:

11 (1) has been operating a perpetual care cemetery in
12 this state for at least two years; and

13 (2) has a perpetual care trust fund with a balance of
14 less than \$100,000, the income of which is insufficient to pay
15 trustee fees.

16 SECTION 5. This Act takes effect September 1, 2017.