AN ACT
relating to cemeteries and perpetual care cemetery corporations;
providing a penalty.

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

SECTION 1. Subdivision (3), Section 711.001, Health and Safety Code, is amended to read as follows:

(3) "Cemetery organization" means:
(A) an unincorporated association of plot owners not operated for profit that is authorized by its articles of association to conduct a business for cemetery purposes; or
(B) a corporation, as defined by Section 712.001(b)(3) [either for profit or not for profit], that is authorized by its certificate of formation or its registration [articles of incorporation] to conduct a business for cemetery purposes.

SECTION 2. Section 711.002, Health and Safety Code, is amended by adding Subsection (a-1) to read as follows:

(a-1) If the person with the right to control the disposition of the decedent's remains fails to make final arrangements or appoint another person to make final arrangements for the disposition before the earlier of the 6th day after the date the person received notice of the decedent's death or the 10th day after the date the decedent died, the person is presumed to be unable or unwilling to control the disposition, and:
S.B. No. 1167

(1) the person's right to control the disposition is terminated; and

(2) the right to control the disposition is passed to the following persons in the following priority:

(A) any other person in the same priority class under Subsection (a) as the person whose right was terminated; or

(B) a person in a different priority class, in the priority listed in Subsection (a).

SECTION 3. Section 711.061, Health and Safety Code, is amended to read as follows:

Sec. 711.061. REQUIREMENTS FOR LAWN CRYPTS. (a) A lawn crypt may not be installed unless:

(1) the lawn crypt is constructed of concrete and reinforced steel or other comparably durable material;

(2) the lawn crypt is installed on not less than six inches of rock, gravel, or other drainage material;

(3) the lawn crypt provides a method to drain water out of the lawn crypt;

(4) the outside top surface of the lawn crypt at the time of installation is at least 1-1/2 feet below the surface of the ground as required by Section 714.001(a)(2) and is capable of withstanding the weight of the soil and sod above the top surface and the weight of machinery and equipment normally used in the maintenance of the cemetery;

(5) the lawn crypt is installed in a garden or other section of the cemetery that has been dedicated for lawn crypt interment purposes in accordance with Section 711.034; and
S.B. No. 1167

(6) [except as provided by Section 711.062,] the lawn
crypt is installed in multiple units of 10 or more or as prescribed
by Subsection (b).

(b) A lawn crypt that is part of a private estate may be
installed in fewer than 10 units. For purposes of this subsection,
a private estate is a small section of a cemetery that has the
following characteristics:

(1) is sold under a single contract;
(2) is usually offset from other burial sites;
(3) allows for interment of several members of the
same family or their designees; and
(4) is identified on the plat for cemetery property as

SECTION 4. Subchapter E, Chapter 711, Health and Safety
Code, is amended by adding Sections 711.063 and 711.064 to read as
follows:

Sec. 711.063. CONSTRUCTION; DEFAULT. (a) A cemetery in
which undeveloped lawn crypt spaces are being sold or reserved for
sale shall begin construction on the lawn crypt section not later
than 48 months after the date of the first sale or reservation,
whichever is earlier, and must complete construction not later than
60 months after the date of the first sale or reservation, whichever
is earlier.

(b) If construction of a lawn crypt section described by
Subsection (a) does not begin or has not been completed by the dates
specified in Subsection (a), on the buyer's written request, the
cemetery shall refund the entire amount paid for the undeveloped
lawn crypt space not later than the 30th day after the date of the
buyer's request.

Sec. 711.064. CONTRACT DISCLOSURES. (a) A sales contract
for an undeveloped lawn crypt space must contain terms, whether in
English or Spanish, that inform the buyer:

(1) that the buyer may, after providing written
notice, cancel the contract for failure by the cemetery or
contractor to construct the lawn crypt space within the time limits
specified by Section 711.063(a) and receive a refund of the entire
amount paid under the contract for the undeveloped lawn crypt space
as described by Section 711.063(b); and

(2) of the options available under a fully paid
contract if the person to be interred in the undeveloped lawn crypt
space dies before completion of the related lawn crypt section,
including the option to:

(A) select a replacement lawn crypt space or
other interment acceptable to the buyer or the buyer's
representative;

(B) elect temporary interment of the human
remains or cremated remains in an existing mausoleum space until
the undeveloped lawn crypt space is completed, at which time the
cemetery shall disinter and reinter the human remains or cremated
remains at no additional charge to the buyer; or

(C) cancel the contract on written notice of the
buyer or the buyer's representative and receive a refund of the
entire amount paid under the contract for the undeveloped lawn
crypt space if:
(i) the cemetery does not offer a temporary interment option; or

(ii) the buyer or the buyer's representative does not accept a replacement lawn crypt or other interment.

(b) A sales contract for undeveloped lawn crypt space must comply with applicable regulations of the Federal Trade Commission, including 16 C.F.R. Section 433.2, with respect to a contract payable in installments.

(c) Each notice required by this section must be written in plain language designed to be easily understood by the average consumer and must be printed in an easily readable font and type size.

SECTION 5. Subdivision (3), Subsection (b), Section 712.001, Health and Safety Code, is amended to read as follows:

(3) "Corporation" means a filing entity or foreign filing entity, as those terms are defined by Section 1.002, Business Organizations Code, or an entity [corporation] that is organized under this chapter, or any corresponding statute in effect before September 1, 1993, to operate one or more perpetual care cemeteries in this state.

SECTION 6. The heading to Section 712.003, Health and Safety Code, is amended to read as follows:

Sec. 712.003. REGISTRATION [INCORPORATION] REQUIRED; MINIMUM CAPITAL.

SECTION 7. Subsection (a), Section 712.003, Health and Safety Code, is amended to read as follows:
S.B. No. 1167

(a) A perpetual care cemetery may not be operated in this state unless a certificate of formation for a domestic filing entity or registration to transact business for a foreign filing entity is [articles of incorporation are] filed with the secretary of state showing:

(1) subscriptions and payments in cash for 100 percent of the entity's ownership or membership interests [the corporation's full capital stock];

(2) the location of its perpetual care cemetery; and

(3) a certificate showing the deposit in its fund of the minimum amount required under Section 712.004.

SECTION 8. Subchapter A, Chapter 712, Health and Safety Code, is amended by adding Sections 712.0032 through 712.0039 and Section 712.00395 to read as follows:

Sec. 712.0032. CERTIFICATE OF AUTHORITY REQUIREMENT. A corporation must hold a certificate of authority issued under this chapter to operate a perpetual care cemetery.

Sec. 712.0033. CERTIFICATE OF AUTHORITY APPLICATION; FEES.

(a) To obtain a certificate of authority to operate a perpetual care cemetery, an applicant must, not later than the 30th day after the date a corporation files its certificate of formation or application for registration with the secretary of state:

(1) file an application, made under oath, on a form prescribed by the department; and

(2) pay a filing fee in an amount set by the Finance Commission of Texas under Section 712.008.

(b) If the corporation fails to comply with Subsection (a),
S.B. No. 1167

1 the commissioner may instruct the secretary of state to remove the
2 corporation from the secretary's active records or cancel the
3 corporation's registration. On an instruction from the
4 commissioner under this subsection, the secretary of state shall
5 remove the corporation from the secretary's active records or
6 cancel the corporation's registration and serve notice of the
7 cancellation on the corporation by registered or certified letter,
8 addressed to the corporation's address.
9
10 (c) A fee or cost paid under this chapter in connection with
11 an application or renewal is not refundable.

Sec. 712.0034. QUALIFICATIONS FOR CERTIFICATE OF
12 AUTHORITY; INVESTIGATION. (a) The commissioner may investigate
13 an applicant before issuing a certificate of authority.
14
15 (b) To qualify for a certificate of authority under this
16 chapter, an applicant must demonstrate to the satisfaction of the
17 commissioner that:
18
19 (1) the applicant's business ability, experience,
20 character, financial condition, and general fitness warrant the
21 public's confidence;
22
23 (2) the cemetery operations manager has at least two
24 years of experience in cemetery management;
25
26 (3) the issuance of the certificate of authority is in
27 the public interest;
28
29 (4) the applicant, a principal of the applicant, or a
30 person who controls the applicant does not owe the department a
delinquent fee, assessment, administrative penalty, or other
31 amount imposed under this chapter or a rule adopted or order issued
under this chapter; and

(5) the applicant corporation:
   (A) is in good standing and statutory compliance
   with this state;
   (B) is authorized to engage in the perpetual care
   cemetery business in this state; and
   (C) does not owe any delinquent franchise or
   other taxes to this state.

Sec. 712.0035. ISSUANCE OF CERTIFICATE OF AUTHORITY.
(a) The commissioner shall issue a certificate of authority if the
commissioner finds that:

(1) the applicant meets the qualifications listed in
Section 712.0034 and it is reasonable to believe that the
applicant's cemetery business will be conducted fairly and
lawfully, according to applicable state and federal law, and in a
manner commanding the public's trust and confidence;

(2) the issuance of the certificate of authority is in
the public interest;

(3) the documentation and forms required to be
submitted by the applicant are acceptable; and

(4) the applicant has satisfied all requirements for
issuance of a certificate of authority.

(b) The applicant is entitled, on request, to a hearing on a
denial of the application. The request must be filed with the
commissioner not later than the 30th day after the date the notice
of denial is mailed. The hearing must be held not later than the
60th day after the date of the request unless the administrative law
judge extends the period for good cause or the parties agree to a later hearing date. The hearing is a contested case under Chapter 2001, Government Code.

Sec. 712.0036. TERM OF CERTIFICATE OF AUTHORITY. An initial certificate of authority expires March 1 of the year after the year the certificate is issued. The certificate must be renewed at that time and by March 1 of each following year.

Sec. 712.0037. RENEWAL OF CERTIFICATE OF AUTHORITY. (a) As a condition of renewal, a certificate holder must meet the qualifications and satisfy the requirements that apply to an applicant for a new certificate of authority. Additionally, not later than the certificate's annual renewal date, a certificate holder shall:

(1) pay an annual renewal fee in an amount established by Finance Commission of Texas rule; and

(2) submit a renewal report under oath and in the form and medium required by the commissioner that demonstrates that the certificate holder meets the qualifications and requirements for holding a certificate.

(b) If the department does not receive a certificate holder's renewal fee and complete renewal report on or before the certificate's renewal date, the commissioner:

(1) shall notify the certificate holder in writing that the certificate holder must submit the renewal report and pay the renewal fee not later than the 30th day after the certificate's renewal date; and

(2) may require the certificate holder to pay a late
fee, in an amount established by Finance Commission of Texas rule
and not subject to appeal, for each business day after the
certificate's renewal date that the commissioner does not receive
the completed renewal report and renewal fee.
(c) On timely receipt of a certificate holder's complete
renewal report and renewal fee and any late fee, the department
shall review the report and the commissioner may:
(1) renew the certificate of authority; or
(2) refuse to renew the certificate of authority and
take other action the commissioner considers appropriate.
(d) The applicant on request is entitled to a hearing to
contest the commissioner's refusal to renew the certificate. The
request must be filed with the commissioner not later than the 30th
day after the date the notice of refusal to renew is mailed. The
hearing is a contested case under Chapter 2001, Government Code.
(e) The holder or principal of or the person in control of
the holder of an expired certificate of authority, or the holder or
principal of or person in control of the holder of a certificate of
authority surrendered under Section 712.00395, who wishes to
conduct activities for which a certificate of authority is required
under this chapter shall file a new application for a certificate of
authority and satisfy all requirements for the certificate that
apply at the time the new application is filed.
Sec. 712.0038. TRANSFER OR ASSIGNMENT PROHIBITED. A
certificate of authority issued under this chapter may not be
transferred or assigned.
Sec. 712.0039. TRANSFER OF BUSINESS OWNERSHIP; CHANGE OF
CONTROL. (a) A certificate holder shall notify the department in writing of a transfer of ownership of the certificate holder's business or a transfer of 25 percent or more of the stock or other ownership or membership interest of the corporation as follows:

1. In the case of a voluntary transfer, not later than the seventh day after the date the contract for transfer is executed; and

2. In the case of an involuntary transfer, not later than one business day after receiving notice of the impending foreclosure or other involuntary transfer.

(b) If the proposed transferee 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 department as required by this chapter. The transfer of the perpetual care fund may not occur until after the date a certificate of authority is issued to the transferee applicant.

(c) If the commissioner denies the application, a hearing may be requested and conducted according to the procedures in Section 712.0035(b).

Sec. 712.00395. SURRENDER OF CERTIFICATE OF AUTHORITY; FEE. (a) A certificate holder may apply to the commissioner for permission to surrender the certificate of authority if the holder:

1. Is a cemetery that qualified for an exemption under Section 711.021(g), but voluntarily elected to become a perpetual care cemetery;

2. Has performed not more than 10 burials per year.
during each of the last five years;

(3) is not larger than 10 acres; and

(4) has a perpetual care fund that is less than $30,000.

(b) The application for permission to surrender a certificate of authority must be sworn to and be on a form prescribed by the department.

(c) The certificate holder shall publish a notice of intention to surrender a certificate of authority to operate a perpetual care cemetery one time in a newspaper of general circulation in each county in which the cemetery is located. The notice must:

(1) be in the form and include the information required by the banking commissioner;

(2) state that:

(A) the certificate holder is applying to surrender the holder's certificate of authority to operate a perpetual care cemetery;

(B) a cemetery plot owner or cemetery plot owner's heir may request a hearing to contest the surrender; and

(C) a request for a hearing must be filed with the department not later than the 14th day after the date the notice is published.

(d) The certificate holder shall submit, not later than the seventh day after the date the notice is published, a publisher's affidavit evidencing publication of the notice.

(e) If a request for hearing is timely filed by a plot owner...
or plot owner's heir, the commissioner shall hold a hearing in
accordance with Chapter 2001, Government Code.

(f) If a request for a hearing is not timely filed by a plot
owner or plot owner's heir, the commissioner may approve or deny the
application.

(g) If an application is denied, and if a hearing is not held
before the denial, the applicant may request a hearing to appeal the
denial of the application. The applicant's request for a hearing
must be filed with the commissioner not later than the 30th day
after the date the notice of denial is mailed. The hearing is a

(h) An order approving the surrender of a certificate of
authority must impose four conditions that are not subject to
objection. Failure to satisfy any of these conditions constitutes
a violation of the commissioner's order, and the certificate holder
is subject to an enforcement action under this chapter. The order
approving the surrender must:

(1) require the perpetual care fund to remain in an
irrevocable trust, with the income to be used for perpetual care of
the cemetery in general and for those plots that were purchased
before the certificate was surrendered;

(2) require that the cemetery remove any signage or
other announcement stating that the cemetery is a perpetual care
cemetery;

(3) require each contract and other evidence of
ownership entered into after the date of the order to clearly state
that the cemetery is not regulated by the Texas Department of
S.B. No. 1167

Banking and may not use the term "perpetual care cemetery"; and

(4) state the location of cemetery records and require

the cemetery to:

(A) retain existing records regarding the

perpetual care fund for five years after the date of the order; and

(B) continue to comply with all recordkeeping

requirements of Chapter 711.

(i) Not later than the 10th day after the date an order

approving the surrender of a certificate of authority is signed,

the certificate holder shall deliver the original certificate of

authority to the commissioner along with a written notice of

surrender that includes the location of the certificate holder's

records and the name, address, telephone number, and other contact

information for an individual who is authorized to provide access

to the records.

(j) The surrender of a certificate of authority does not

reduce or eliminate a certificate holder's administrative, civil,
or criminal liability arising from any acts or omissions that occur
before the surrender of the certificate.

SECTION 9. Section 712.022, Health and Safety Code, is
amended to read as follows:

Sec. 712.022. OPERATION OF PERPETUAL CARE CEMETERY. A
corporation authorized by law to operate a perpetual care cemetery
but not doing so may do so if the corporation:

(1) complies with the requirements of this chapter for

obtaining a certificate of authority [notifies the commissioner];

and

14
S.B. No. 1167

(2) establishes a fund as provided by Section 712.021 in an amount equal to the larger of:

(A) the amount that would have been paid into the fund if the cemetery operated as a perpetual care cemetery from the date of the cemetery's first sale of plots; or

(B) the minimum amount provided by Section 712.004.

SECTION 10. Subsection (a), Section 712.044, Health and Safety Code, is amended to read as follows:

(a) The commissioner may examine on a periodic basis[annually or more often] as the commissioner reasonably considers necessary or appropriate to protect the interest of plot owners and efficiently administer and enforce this chapter:

(1) the books and records of a corporation relating to its fund, including deposits to or withdrawals from the fund, income of the fund, and uses and expenditures of that income;

(2) the books and records of a corporation relating to sales of undeveloped mausoleum spaces and any preconstruction trust established by the corporation as provided by Section 712.063, including deposits to or withdrawals from the preconstruction trust, income of the preconstruction trust, and uses and expenditures of principal and income of the preconstruction trust; and

(3) the consumer complaint files of a corporation relating to the fund, sales of undeveloped mausoleum spaces, a preconstruction trust, or to discharge of the corporation's perpetual care responsibilities, minutes of the corporation's
S.B. No. 1167

board of directors, cemetery dedication statements and plat maps, and mausoleum and lawn crypt construction contracts and specifications.

SECTION 11. Section 712.0441, Health and Safety Code, is amended by amending Subsection (f) and adding Subsection (f-1) to read as follows:

(f) The commissioner may issue an order requiring restitution by a person to the cemetery’s fund or to a preconstruction trust if, after notice and opportunity for hearing held in accordance with the procedures for a contested case hearing under Chapter 2001, Government Code, the commissioner finds that the corporation has not made a deposit in the fund as required by Section 712.028 or in the preconstruction trust as required by Section 712.063.

(f-1) The commissioner may issue an order requiring restitution by a person if, after notice and opportunity for a hearing held in accordance with the procedures for a contested case hearing under Chapter 2001, Government Code, the commissioner finds that the corporation has not ordered memorials, as defined by Section 711.001(20-a), in compliance with the deadlines established by rules adopted under this chapter.

SECTION 12. Subsection (a), Section 712.0442, 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 712.0441 be imposed
on the person committing the violation or that the commissioner
cancel or not renew the corporation's certificate of authority
(person's permit) under this chapter [Chapter 154, Finance Code,
if the person holds such a certificate [permit].

SECTION 13. Subchapter C, Chapter 712, Health and Safety
Code, is amended by adding Sections 712.0443, 712.0444, and
712.0445 to read as follows:

Sec. 712.0443. CEASE AND DESIST ORDER. (a) The
commissioner may issue an order to cease and desist to a person if:
(1) the commissioner finds by examination or other
credible evidence that the person has violated a law of this state
relating to perpetual care cemeteries, including a violation of
this chapter, the commissioner's final order, or a Finance
Commission of Texas rule; and

(2) the violation was not corrected by the 31st day
after the date the person receives written notice of the violation
from the department.

(b) An order proposed under this section shall be served on
the person and must state the grounds for the proposed order with
reasonable certainty and the proposed effective date, which may not
be less than the 20th day after the date the order is mailed or
delivered. The order becomes effective on the proposed date unless
the person requests a hearing not later than the 19th day after the
Sec. 712.0444. EMERGENCY ORDER. (a) The commissioner may issue an emergency order that takes effect immediately if the commissioner finds that immediate and irreparable harm is threatened to the public or a plot owner, marker purchaser, or other person whose interests are protected by this chapter.

(b) An emergency order remains in effect unless stayed by the commissioner.

(c) The person named in the emergency order may request in writing, not later than the 18th day after the date the order is mailed, a hearing to show that the emergency order should be stayed. On receipt of the request, the commissioner shall set a time for the hearing not later than the 21st day after the date the commissioner received the request, unless extended at the request of the person named in the order.

(d) The hearing is an administrative hearing relating to the validity of findings that support immediate effect of the order.

Sec. 712.0445. RECEIVERSHIP PROCEEDINGS. (a) In conjunction with a proceeding to forfeit the right to do business in this state brought by the attorney general, the attorney general may seek the appointment of a receiver. This remedy is in addition to other grounds for the appointment of a receiver.

(b) If the receiver is a private party, the receiver shall be compensated from the corporation or, if the corporation has no
assets available to pay the receiver, from the income only of the perpetual care fund. The receiver may not invade the principal of the fund.

(c) The court may appoint a department employee as receiver. If the receiver is a department employee, the employee may not receive compensation for serving as receiver in addition to the employee's regular salary. The department may receive reimbursement from the corporation for the travel expenses and the fully allocated personnel costs associated with the employee's service as receiver.

(d) A department employee serving as receiver is not personally liable for damages arising from the employee's official act or omission unless the act or omission is corrupt or malicious. The attorney general shall defend an action brought against an employee serving as receiver because of an official act or omission as receiver regardless of whether the employee has terminated service with the department before the action commences.

SECTION 14. Section 712.048, Health and Safety Code, is amended by adding Subsection (c) to read as follows:

(c) A person commits an offense if the person collects money for the purchase of a memorial, as defined by Section 711.001, and knowingly defalcates or misappropriates the funds. An offense under this subsection is punishable as if it were an offense under Section 32.45, Penal Code. This subsection does not prevent an aggrieved party or the attorney general from maintaining a civil action for the recovery of damages, or the commissioner from maintaining an administrative action for restitution, caused by an
S.B. No. 1167

1 injury resulting from an offense under this subsection.
2
3 SECTION 15. Sections 711.062 and 712.0031 and Subsection
4 (e), Section 712.0441, Health and Safety Code, are repealed.
5
6 SECTION 16. A person who owns and operates a perpetual care
7 cemetery on September 1, 2011, that on that date complies with
8 Sections 712.003 and 712.0031, Health and Safety Code, as those
9 sections existed before amendment or repeal by this Act, is
10 automatically granted a certificate of authority. The certificate
11 of authority expires March 1, 2012, unless the certificate holder
12 renews the certificate in accordance with Section 712.0037, Health
13 and Safety Code, as added by this Act.
14
15 SECTION 17. This Act takes effect September 1, 2011.
S.B. No. 1167

President of the Senate

I hereby certify that S.B. No. 1167 passed the Senate on April 7, 2011, by the following vote: Yeas 31, Nays 0.

Secretary of the Senate

I hereby certify that S.B. No. 1167 passed the House on May 23, 2011, by the following vote: Yeas 145, Nays 1, two present not voting.

Chief Clerk of the House

Approved:
17 Jun '11

Governor

FILED IN THE OFFICE OF THE SECRETARY OF STATE

Secretary of State