

---

# APPENDIX B

## LAWS APPLYING TO CEMETERIES

## HEALTH AND SAFETY CODE

## TITLE 8. DEATH AND DISPOSITION OF THE BODY

## SUBTITLE C. CEMETERIES AND CREMATORIES

## CHAPTER 711. GENERAL PROVISIONS RELATING TO CEMETERIES

## SUBCHAPTER A. GENERAL PROVISIONS

Sec. 711.001. DEFINITIONS. In this chapter:

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

(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.

(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.

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

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

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

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

(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), that is authorized by its certificate of formation or its registration to conduct a business for cemetery purposes.

(4) "Cemetery purpose" means a purpose necessary or incidental to establishing, maintaining, managing, operating, improving, or conducting a cemetery, interring remains, or caring for, preserving, and embellishing cemetery property.

(5) "Columbarium" means a durable, fireproof structure, or a room or other space in a durable, fireproof structure, containing niches and used or intended to be used to contain cremated remains.

(5-a) "Cremains receptacle" means a marker, boulder, bench, pedestal, pillar, or other aboveground vessel that contains niches for cremated remains.

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

(7) "Cremation" means the irreversible process of reducing human remains to bone fragments through extreme heat and evaporation, which may include the processing or the pulverization of bone fragments.

(8) "Crematory" means a structure containing a furnace used or intended to be used for the cremation of human remains.

(9) "Crematory and columbarium" means a durable, fireproof structure containing both a crematory and columbarium.

(10) "Crypt" means a chamber in a mausoleum of sufficient size to inter human remains.

(11) "Directors" means the governing body of a cemetery organization.

(12) "Entombment" means interment in a crypt.

(13) "Funeral establishment" means a place of business used in the care and preparation for interment or transportation of human remains, or any place where one or more persons, either as sole owner, in copartnership, or through corporate status, are engaged or represent themselves to be engaged in the business of embalming or funeral directing.

(14) "Grave" means a space of ground that contains interred

human remains or is in a burial park and that is used or intended to be used for interment of human remains in the ground.

(15) "Human remains" means the body of a decedent.

(16) "Interment" means the permanent disposition of remains by entombment, burial, or placement in a niche.

(17) "Interment right" means the right to inter the remains of one decedent in a plot.

(18) "Inurnment" means the placement of cremated remains in an urn.

(19) "Lawn crypt" means a subsurface receptacle installed in multiple units for ground burial of human remains.

(20) "Mausoleum" means a durable, fireproof structure used or intended to be used for entombment.

(20-a) "Memorial" means a headstone, tombstone, gravestone, monument, or other marker denoting a grave.

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

(22) "Nonperpetual care cemetery" means a cemetery that is not a perpetual care cemetery.

(23) "Perpetual care" or "endowment care" means the maintenance, repair, and care of all places in the cemetery.

(24) "Perpetual care cemetery" or "endowment care cemetery" means a cemetery for the benefit of which a perpetual care trust fund is established as provided by Chapter 712.

(25) "Plot" means space in a cemetery owned by an individual or organization that is used or intended to be used for interment, including a grave or adjoining graves, a crypt or adjoining crypts, a lawn crypt or adjoining lawn crypts, or a niche or adjoining niches.

(26) "Plot owner" means a person:

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

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

(27) "Prepaid funeral contract" means a written contract providing for prearranged or prepaid funeral services or funeral merchandise.

(28) "Remains" means either human remains or cremated remains.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 212, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 1, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 1389, Sec. 3, eff. Sept. 1, 1997.

Amended by:

Acts 2005, 79th Leg., Ch. 106 (S.B. 350), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 1, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 1, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 1, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 1, eff. September 1, 2013.

Sec. 711.002. DISPOSITION OF REMAINS; DUTY TO INTER. (a) Except as provided by Subsection (l), unless a decedent has left directions in writing for the disposition of the decedent's remains as provided in Subsection (g), the following persons, in the priority listed, have the right to control the disposition, including cremation, of the decedent's remains, shall inter the remains, and are liable for the reasonable cost of interment:

(1) the person designated in a written instrument signed by the decedent;

(2) the decedent's surviving spouse;

(3) any one of the decedent's surviving adult children;

(4) either one of the decedent's surviving parents;

(5) any one of the decedent's surviving adult siblings; or

(6) any adult person in the next degree of kinship in the order named by law to inherit the estate of the decedent.

(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:

(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).

(a-2) If a United States Department of Defense Record of Emergency Data, DD Form 93, or a successor form, was in effect at the time of death for a decedent who died in a manner described by 10 U.S.C. Sections 1481(a)(1) through (8), the DD Form 93 controls over any other written instrument described by Subsection (a)(1) or (g) with respect to designating a person to control the disposition of the decedent's remains. Notwithstanding Subsections (b) and (c), the form is legally sufficient if it is properly completed, signed by the decedent, and witnessed in the manner required by the form.

(b) The written instrument referred to in Subsection (a)(1) shall be in substantially the following form:

APPOINTMENT OF AGENT TO CONTROL DISPOSITION OF REMAINS

I, \_\_\_\_\_,  
(your name and address)

being of sound mind, willfully and voluntarily make known my desire that, upon my death, the disposition of my remains shall be controlled by \_\_\_\_\_

(name of agent)

in accordance with Section [711.002](#) of the Health and Safety Code and, with respect to that subject only, I hereby appoint such person as my agent (attorney-in-fact).

All decisions made by my agent with respect to the disposition

of my remains, including cremation, shall be binding.

SPECIAL DIRECTIONS:

Set forth below are any special directions limiting the power granted to my agent:

\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_  
\_\_\_\_\_

AGENT:

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Acceptance of Appointment: \_\_\_\_\_  
(signature of agent)

Date of Signature: \_\_\_\_\_

SUCCESSORS:

If my agent dies, becomes legally disabled, resigns, or refuses to act, I hereby appoint the following persons (each to act alone and successively, in the order named) to serve as my agent (attorney-in-fact) to control the disposition of my remains as authorized by this document:

1. First Successor

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Acceptance of Appointment: \_\_\_\_\_  
(signature of first successor)

Date of Signature: \_\_\_\_\_

2. Second Successor

Name: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone Number: \_\_\_\_\_

Acceptance of Appointment: \_\_\_\_\_  
(signature of second successor)

Date of Signature: \_\_\_\_\_

DURATION:

This appointment becomes effective upon my death.

PRIOR APPOINTMENTS REVOKED:

I hereby revoke any prior appointment of any person to control the disposition of my remains.

RELIANCE:

I hereby agree that any cemetery organization, business operating a crematory or columbarium or both, funeral director or embalmer, or funeral establishment who receives a copy of this document may act under it. Any modification or revocation of this document is not effective as to any such party until that party receives actual notice of the modification or revocation. No such party shall be liable because of reliance on a copy of this document.

ASSUMPTION:

THE AGENT, AND EACH SUCCESSOR AGENT, BY ACCEPTING THIS APPOINTMENT, ASSUMES THE OBLIGATIONS PROVIDED IN, AND IS BOUND BY THE PROVISIONS OF, SECTION 711.002 OF THE HEALTH AND SAFETY CODE.

Signed this \_\_\_\_\_ day of \_\_\_\_\_, 19\_\_.

\_\_\_\_\_  
(your signature)

State of \_\_\_\_\_

County of \_\_\_\_\_

This document was acknowledged before me on \_\_\_\_\_ (date) by \_\_\_\_\_ (name of principal).

\_\_\_\_\_  
(signature of notarial officer)

(Seal, if any, of notary)

\_\_\_\_\_  
(printed name)

My commission expires:  
\_\_\_\_\_

(c) A written instrument is legally sufficient under Subsection (a)(1) if the wording of the instrument complies substantially with Subsection (b), the instrument is properly completed, the instrument is signed by the decedent, the agent, and each successor agent, and the signature of the decedent is acknowledged. Such written instrument may be modified or revoked only by a subsequent written instrument that complies with this subsection.

(d) A person listed in Subsection (a) has the right, duty, and liability provided by that subsection only if there is no person in a

priority listed before the person.

(e) If there is no person with the duty to inter under Subsection (a) and:

(1) an inquest is held, the person conducting the inquest shall inter the remains; and

(2) an inquest is not held, the county in which the death occurred shall inter the remains.

(f) A person who represents that the person knows the identity of a decedent and, in order to procure the disposition, including cremation, of the decedent's remains, signs an order or statement, other than a death certificate, warrants the identity of the decedent and is liable for all damages that result, directly or indirectly, from that warrant.

(g) A person may provide written directions for the disposition, including cremation, of the person's remains in a will, a prepaid funeral contract, or a written instrument signed and acknowledged by such person. The directions may govern the inscription to be placed on a grave marker attached to any plot in which the decedent had the right of sepulture at the time of death and in which plot the decedent is subsequently interred. The directions may be modified or revoked only by a subsequent writing signed and acknowledged by such person. The person otherwise entitled to control the disposition of a decedent's remains under this section shall faithfully carry out the directions of the decedent to the extent that the decedent's estate or the person controlling the disposition are financially able to do so.

(h) If the directions are in a will, they shall be carried out immediately without the necessity of probate. If the will is not probated or is declared invalid for testamentary purposes, the directions are valid to the extent to which they have been acted on in good faith.

(i) A cemetery organization, a business operating a crematory or columbarium or both, a funeral director or an embalmer, or a funeral establishment shall not be liable for carrying out the written directions of a decedent or the directions of any person who represents that the person is entitled to control the disposition of the decedent's remains.

(j) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 707, Sec. 3,

eff. June 17, 2011.

(k) Any dispute among any of the persons listed in Subsection (a) concerning their right to control the disposition, including cremation, of a decedent's remains shall be resolved by a court of competent jurisdiction. A cemetery organization or funeral establishment shall not be liable for refusing to accept the decedent's remains, or to inter or otherwise dispose of the decedent's remains, until it receives a court order or other suitable confirmation that the dispute has been resolved or settled.

(l) A person listed in Subsection (a) may not control the disposition of the decedent's remains if, in connection with the decedent's death, an indictment has been filed charging the person with a crime under Chapter 19, Penal Code, that involves family violence against the decedent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 213, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 2, eff. Sept. 1, 1993; Acts 1997, 75th Leg., ch. 967, Sec. 1, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 1385, Sec. 1, eff. Aug. 30, 1999.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 95 (H.B. 74), Sec. 1, eff. May 20, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 2, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 707 (H.B. 549), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 707 (H.B. 549), Sec. 3, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 2, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 22.001(28), eff. September 1, 2013.

Sec. 711.003. RECORDS OF INTERMENT. A record shall be kept of each interment in a cemetery. The record must include:

- (1) the date the remains are received;
- (2) the date the remains are interred;
- (3) the name and age of the person interred if those facts

can be conveniently obtained; and

(4) the identity of the plot in which the remains are interred.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 3, eff. Sept. 1, 1993.

Sec. 711.004. REMOVAL OF REMAINS. (a) Remains interred in a cemetery may be removed from a plot in the cemetery with the written consent of the cemetery organization operating the cemetery and the written consent of the current plot owner or owners and the following persons, in the priority listed:

- (1) the decedent's surviving spouse;
- (2) the decedent's surviving adult children;
- (3) the decedent's surviving parents;
- (4) the decedent's adult siblings; or

(5) the adult person in the next degree of kinship in the order named by law to inherit the estate of the decedent.

(b) A person listed in Subsection (a) may consent to the removal only if there is no person in a priority listed before that person.

(c) If the consent required by Subsection (a) cannot be obtained, the remains may be removed by permission of a district court of the county in which the cemetery is located. Before the date of application to the court for permission to remove remains under this subsection, notice must be given to:

(1) the cemetery organization operating the cemetery in which the remains are interred or if the cemetery organization cannot be located or does not exist, the Texas Historical Commission;

(2) each person whose consent is required for removal of the remains under Subsection (a); and

(3) any other person that the court requires to be served.

(d) For the purposes of Subsection (c) and except as provided by this subsection or Subsection (k), personal notice must be given not later than the 11th day before the date of application to the court for permission to remove the remains, or notice by certified or registered mail must be given not later than the 16th day before the date of application. In an emergency circumstance described by Subsection (l) that necessitates immediate removal of remains from a

plot, the court shall hear an application for permission to remove remains under Subsection (c) not later than the first business day after the application is made. In an emergency circumstance described by this subsection, personal notice may be given on the date the application is made.

(e) Subsections (a)-(d) and (k) do not apply to the removal of remains:

(1) from one plot to another plot in the same cemetery, if the cemetery:

(A) is a family, fraternal, or community cemetery that is not larger than 10 acres;

(B) is owned or operated by an unincorporated association of plot owners not operated for profit;

(C) is owned or operated by a church, a religious society or denomination, or an entity solely administering the temporalities of a church or religious society or denomination; or

(D) is a public cemetery owned by this state, a county, or a municipality;

(2) by the cemetery organization from a plot for which the purchase price is past due and unpaid, to another suitable place;

(3) on the order of a court or person who conducts inquests; or

(4) from a plot in a cemetery owned and operated by the Veterans' Land Board.

(f) Except as is authorized for a justice of the peace acting as coroner or medical examiner under Chapter 49, Code of Criminal Procedure, remains may not be removed from a cemetery except on the written order of the state registrar or the state registrar's designee. The cemetery organization shall keep a duplicate copy of the order as part of its records. The Texas Funeral Service Commission may adopt rules to implement this subsection.

(g) A person who removes remains from a cemetery shall keep a record of the removal that includes:

(1) the date the remains are removed;

(2) the name and age at death of the decedent if those facts can be conveniently obtained;

(3) the place to which the remains are removed; and

(4) the cemetery and plot from which the remains are

removed.

(h) If the remains are not reinterred, the person who removes the remains shall:

(1) make and keep a record of the disposition of the remains; and

(2) not later than the 30th day after the date the remains are removed, provide notice by certified mail to the Texas Funeral Service Commission and the Department of State Health Services of the person's intent not to reinter the remains and the reason the remains will not be reinterred.

(i) A person who removes remains from a cemetery shall give the cemetery organization operating the cemetery a copy of the record made as required by Subsections (g) and (h).

(j) A cemetery organization may remove remains from a plot in the cemetery and transfer the remains to another plot in the same cemetery without the written consent required under Subsection (a) if the cemetery seeks consent by sending written notice by certified mail, return receipt requested, to the last known address of the current owner of the plot from which the remains are to be removed or to the person designated under Subsection (a). The notice must indicate that the remains will be removed, the reason for the removal of the remains, and the proposed location of the reinterment of the remains. The cemetery may transfer the remains to another plot in accordance with this subsection if an objection is not received in response to the notice before the 31st day after the date the notice is sent. A cemetery may not remove remains under this subsection for a fraudulent purpose or to allow the sale of the plot in which the remains are located to another person.

(k) In an emergency circumstance described by Subsection (l) that necessitates immediate removal of remains before the date on which the court is required to hear an application for permission to remove remains under Subsection (d), a cemetery organization may remove remains from a plot in the cemetery and transfer the remains to another plot in the same cemetery without the court hearing. A cemetery association that removes remains under this subsection shall send written notice of the removal by certified mail, return receipt requested, to the last known address of the person designated under Subsection (a) not later than the fifth day after the date the

remains are removed. The notice must indicate that the remains were removed, the reason for the removal of the remains, and the location of the reinterment of the remains.

(1) For purposes of Subsections (d) and (k), "emergency circumstance" means:

- (1) a natural disaster; or
- (2) an error in the interment of remains.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 214, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 488, Sec. 1, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 4, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 504, Sec. 1, eff. Sept. 1, 2003; Acts 2003, 78th Leg., ch. 562, Sec. 32, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. [2927](#)), Sec. 2, eff. September 1, 2009.

Sec. 711.007. NUISANCE; ABATEMENT AND INJUNCTION. (a) A district court of the county in which a cemetery is located may, by order, abate the cemetery as a nuisance and enjoin its continuance if the cemetery is:

- (1) maintained, located, or used in violation of this chapter or Chapter 712; or
- (2) neglected so that it is offensive to the inhabitants of the surrounding section.

(b) The proceeding may be brought by:

- (1) the attorney general;
- (2) the Banking Commissioner of Texas;
- (3) the governing body of a municipality with a population of more than 25,000, if the cemetery is located in the municipality or not farther than five miles from the municipality;
- (4) the district attorney of the county, if the cemetery is located in an area of the county not described by Subdivision (3);
- (5) the owner of a residence:
  - (A) in or near the municipality in which the cemetery is located; or
  - (B) in the area proscribed for the location of a cemetery by Section [711.008](#);

(6) the Texas Funeral Service Commission; or

(7) the owner of a plot in the cemetery.

(c) The court shall grant a permanent injunction against each person responsible for the nuisance if a cemetery nuisance exists or is threatened.

(d) If a cemetery nuisance under Subsection (a)(2) is located in a municipality, the governing body of the municipality may authorize the removal of all bodies, monuments, tombs, or other similar items from the cemetery to a perpetual care cemetery.

(e) Notice of an action under this section must be provided to the Texas Historical Commission and to the county historical commission of the county in which the cemetery is located. The Texas Historical Commission and the county historical commission may intervene and become parties to the suit.

(f) In an action under this section, the court shall determine:

(1) whether the cemetery nuisance must be abated by repair and restoration or by removal of the cemetery; and

(2) the party or parties liable for the costs associated with the abatement.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 6, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 562, Sec. 33, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 3, eff. September 1, 2009.

Sec. 711.008. LOCATION OF CEMETERY. (a) Except as provided by Subsections (b), (f), (g), (h), and (k), an individual, corporation, partnership, firm, trust, or association may not establish or operate a cemetery, or use any land for the interment of remains, located:

(1) in or within one mile of the boundaries of a municipality with a population of 5,000 to 25,000;

(2) in or within two miles of the boundaries of a municipality with a population of 25,000 to 50,000;

(3) in or within three miles of the boundaries of a municipality with a population of 50,000 to 100,000;

(4) in or within four miles of the boundaries of a municipality with a population of 100,000 to 200,000; or

(5) in or within five miles of the boundaries of a municipality with a population of at least 200,000.

(b) Subsection (a) does not apply to:

(1) a cemetery heretofore established and operating;

(2) the establishment and use of a columbarium by an organized religious society or sect that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, as part of or attached to the principal church building owned by the society or sect;

(3) the establishment and use of a columbarium by an organized religious society or sect that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, on land that:

(A) is owned by the society or sect; and

(B) is part of the campus on which an existing principal church building is located;

(4) the establishment and use of a columbarium on the campus of a private or independent institution of higher education, as defined by Section 61.003, Education Code, that is wholly or substantially controlled, managed, owned, or supported by or otherwise affiliated with an organized religious society or sect that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, if a place of worship is located on the campus;

(5) the establishment and use of a mausoleum that is:

(A) constructed beneath the principal church building owned by an organized religious society or sect that:

(i) is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code; and

(ii) has recognized religious traditions and practices of interring the remains of ordained clergy in or below the principal church building; and

(B) used only for the interment of the remains of ordained clergy of that organized religious society or sect;

(6) the establishment and operation, if authorized in accordance with Subsection (h), of a perpetual care cemetery by an

organized religious society or sect that:

(A) is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code;

(B) has been in existence for at least five years;

(C) has at least \$500,000 in assets; and

(D) establishes and operates the cemetery on land that:

(i) is owned by the society or sect;

(ii) together with any other land owned by the society or sect and adjacent to the land on which the cemetery is located, is not less than 10 acres; and

(iii) is in a municipality with a population of at least one million that is located predominantly in a county that has a total area of less than 1,000 square miles; or

(7) the establishment and use of a private family cemetery by an organization that is exempt from income taxation under Section 501(a), Internal Revenue Code of 1986, by being listed under Section 501(c)(3) of that code, on land that is:

(A) owned by the organization; and

(B) located in a county:

(i) with a population of more than 125,000; and

(ii) that is adjacent to a county that has a population of more than 1.5 million and in which more than 75 percent of the population lives in a single municipality.

(c) Subsection (a) does not apply to a private family cemetery established and operating on or before September 1, 2009.

(d) Subsection (a) does not apply to a cemetery established and operating before September 1, 1995, in a county with a population of more than 285,000 and less than 300,000 that borders the Gulf of Mexico.

(e) For the purpose of determining where a cemetery may be located under Subsection (a), the boundary of an area annexed by a municipality is not considered to be a boundary of the municipality if no more than 10 percent of the boundary of the annexed area is composed of a part of the boundary of the annexing municipality as it existed immediately before the annexation.

(f) This subsection applies only to a municipality with a population of at least 60,000 that is located in a county with a

population of no more than 155,000. Not later than December 1, 2001, a charitable nonprofit corporation may file a written application with the governing body of a municipality to establish or use a cemetery located inside the boundaries of the municipality. The municipality by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of a cemetery located inside the boundaries of the municipality if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare.

(g) Not later than December 1, 2003, a corporation may file a written application with the governing body of a municipality that has a population of at least 27,000 and not more than 30,000 and that is located in a county with a population of at least 245,000 and not more than 250,000 to establish or use a cemetery located outside the municipality but within two miles of the municipal boundaries. The municipality by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of the cemetery if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare.

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 1017  
(H.B. 2643), Sec. 1

(h) The governing body of a municipality described by Subsection (b)(6)(D)(iii) may authorize the establishment and use in accordance with Subsection (b)(6) of a cemetery located inside the boundaries of the municipality if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare.

Text of subsection as added by Acts 2011, 82nd Leg., R.S., Ch. 367  
(S.B. 131), Sec. 1

(h) Not later than September 1, 2014, a person may file a

written application with the governing body of a municipality to establish or use a cemetery located inside the boundaries of the municipality. The municipality by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of a cemetery located inside the boundaries of the municipality if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare. This subsection applies only to a municipality that:

- (1) is located in three or more counties;
- (2) has a population of 18,000 or more; and
- (3) does not have a cemetery within its boundaries, other

than a family cemetery.

(i), (j) Deleted by Acts 1993, 73rd Leg., ch. 634, Sec. 7, eff. Sept. 1, 1993.

(k) This subsection applies only to a municipality with a population of 115,000 or more that is located in a county with a population of less than 132,000. Not later than September 1, 1994, a person may file a written application with the governing body of the municipality to establish or use a cemetery located inside the boundaries of the municipality. The municipality by ordinance shall prescribe the information to be included in the application. The governing body by ordinance may authorize the establishment or use of a cemetery located inside the boundaries of the municipality if the municipality determines and states in the ordinance that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 215, 216, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 597, Sec. 77, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 7, eff. Sept. 1, 1993; Acts 1993, 73rd Leg., ch. 736, Sec. 1, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 200, Sec. 1, eff. May 21, 2001; Acts 2001, 77th Leg., ch. 631, Sec. 1, eff. June 13, 2001; Acts 2001, 77th Leg., ch. 669, Sec. 39, eff. Sept. 1, 2001; Acts 2003, 78th Leg., ch. 98, Sec. 1, eff. May 20, 2003.

Amended by:

Acts 2005, 79th Leg., Ch. 106 (S.B. 350), Sec. 2, eff. September

1, 2005.

Acts 2007, 80th Leg., R.S., Ch. 1026 (H.B. 1614), Sec. 1, eff. September 1, 2007.

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 3, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 373 (H.B. 1404), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 487 (S.B. 662), Sec. 1, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 4, eff. September 1, 2009.

Acts 2011, 82nd Leg., R.S., Ch. 367 (S.B. 131), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 721 (H.B. 788), Sec. 1, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1017 (H.B. 2643), Sec. 1, eff. June 17, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1163 (H.B. 2702), Sec. 49, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 10.007, eff. September 1, 2013.

Sec. 711.009. AUTHORITY OF CEMETERY KEEPER. (a) The superintendent, sexton, or other person in charge of a cemetery has the same powers, duties, and immunities granted by law to:

(1) a police officer in the municipality in which the cemetery is located; or

(2) a constable or sheriff of the county in which the cemetery is located if the cemetery is outside a municipality.

(b) A person who is granted authority under Subsection (a) shall maintain order and enforce the cemetery organization's rules, state law, and municipal ordinances in the cemetery over which that person has charge and as near the cemetery as necessary to protect cemetery property.

(c) This section applies only to a cemetery located in a municipality with a population of 40,000 or more or in a county with a population of 290,000 or more.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1993, 73rd Leg., ch. 634, Sec. 8, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 5, eff. September 1, 2005.

Acts 2013, 83rd Leg., R.S., Ch. 161 (S.B. 1093), Sec. 10.008, eff. September 1, 2013.

Sec. 711.010. UNKNOWN OR ABANDONED CEMETERY. (a) The owner of property on which an unknown cemetery is discovered or on which an abandoned cemetery is located may not construct improvements on the property in a manner that would further disturb the cemetery until the human remains interred in the cemetery are removed under a written order issued by the state registrar or the state registrar's designee under Section 711.004(f) and under an order of a district court as provided by this section.

(b) On petition of the owner of the property, a district court of the county in which an unknown cemetery is discovered or an abandoned cemetery is located may order the removal of any dedication for cemetery purposes that affects the property if the court finds that the removal of the dedication is in the public interest. If a court orders the removal of a dedication of a cemetery and all human remains on the property have not previously been removed, the court shall order the removal of the human remains from the cemetery to a perpetual care cemetery.

(c) In addition to any notice required by Section 711.004, notice of a petition filed under Subsection (b) must be given to the Texas Historical Commission and to the county historical commission of the county in which the cemetery is located. The Texas Historical Commission and the county historical commission may intervene and become parties to the suit.

Added by Acts 1999, 76th Leg., ch. 703, Sec. 1, eff. June 18, 1999.

Amended by:

Acts 2005, 79th Leg., Ch. 251 (H.B. 1011), Sec. 1, eff. September 1, 2005.

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 5, eff. September 1, 2009.

Sec. 711.0105. METHOD OF REMOVAL OF REMAINS. (a) The removal of remains authorized under this chapter shall be supervised by a cemetery keeper, a licensed funeral director, a medical examiner, a coroner, or a professional archeologist.

(b) The person removing the remains shall make a good faith effort to locate and remove all human remains, any casket or other covering of the remains, and any funerary objects associated with the remains.

(c) Remains that have been moved must be reburied unless a court, medical examiner, coroner, other authorized official, or next of kin approves a different disposition of the remains.

Added by Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 6, eff. September 1, 2009.

Sec. 711.011. FILING RECORD OF UNKNOWN CEMETERY. (a) A person who discovers an unknown or abandoned cemetery shall file notice of the cemetery with the county clerk of the county in which the cemetery is located not later than the 10th day after the date of the discovery. The notice must contain a legal description of the land on which the unknown or abandoned cemetery was found and describe the approximate location of the cemetery and the evidence of the cemetery that was discovered.

(b) A county clerk may not charge a fee for filing notice under this section.

(c) The county clerk shall send a copy of the notice to the Texas Historical Commission and file the notice in the deed records of the county, with an index entry referencing the land on which the cemetery was discovered.

Added by Acts 1999, 76th Leg., ch. 703, Sec. 1, eff. June 18, 1999.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 7, eff. September 1, 2009.

Sec. 711.012. RULES. (a) The Finance Commission of Texas may adopt rules to enforce and administer Subchapter C-1 and Sections 711.003, 711.004, 711.007, 711.008, 711.0105, 711.021-711.024, 711.032-711.036, 711.038, 711.0381, 711.040-711.042, 711.052,

711.061, 711.063, and 711.064 relating to perpetual care cemeteries.

(b) The Texas Funeral Service Commission may adopt rules, establish procedures, and prescribe forms to enforce and administer Sections 711.003, 711.008, 711.0105, 711.021-711.034, 711.038, 711.0395, 711.041, 711.042, 711.052, 711.061, 711.063, and 711.064 relating to cemeteries that are not perpetual care cemeteries.

(c) The Texas Historical Commission may adopt rules to:

(1) enforce and administer Sections 711.010 and 711.011; and  
(2) enforce and administer Sections 711.004, 711.007, 711.0105, 711.035, and 711.036 relating to cemeteries that are not perpetual care cemeteries.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 34, eff. Sept. 1, 2003.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 4, eff. September 1, 2009.

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 8, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 2, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 2, eff. September 1, 2013.

#### SUBCHAPTER B. CEMETERY CORPORATIONS

Sec. 711.021. FORMATION OF CORPORATION TO MAINTAIN AND OPERATE CEMETERY. (a) An individual, corporation, partnership, firm, trust, or association may not engage in a business for cemetery purposes in this state unless the person is a corporation organized for those purposes.

(b) A corporation conducting a business for cemetery purposes, including the sale of plots, may be formed only as provided by this section. The corporation must be a filing entity or foreign filing entity, as those terms are defined by Section 1.002, Business Organizations Code.

(b-1) The formation and governance of a nonprofit corporation for cemetery purposes is subject to Sections 711.022 and 711.023.

(c) The charter of a cemetery corporation formed after May 15, 1947, but before September 1, 1993, must state whether the

corporation:

- (1) is operated for profit or not for profit; and
- (2) is operating a perpetual care cemetery or a

nonperpetual care cemetery.

(d) A corporation formed before September 3, 1945, under statutory authority other than Section 5, Chapter 340, Acts of the 49th Legislature, Regular Session, 1945 (Article 912a-5, Vernon's Texas Civil Statutes), to maintain and operate a cemetery is governed by this chapter only to the extent that this chapter does not conflict with the charter or articles of incorporation of the corporation.

(e) This section does not apply to a corporation chartered by the state before September 3, 1945, that, under its charter, bylaws, or dedication, created a perpetual care trust fund and maintains that fund in accordance with the corporation's trust agreement, Chapter 712, and this chapter. The corporation may operate a perpetual care cemetery without amending the corporation's charter as if it had been incorporated under this section.

(f) Any cemetery that begins its initial operations on or after September 1, 1993, shall be operated as a perpetual care cemetery in accordance with Chapter 712.

(g) This section does not apply to:

- (1) a family, fraternal, or community cemetery that is not larger than 10 acres;
- (2) an unincorporated association of plot owners not operated for profit;
- (3) a church, a religious society or denomination, or an entity solely administering the temporalities of a church or religious society or denomination; or
- (4) a public cemetery belonging to this state or a county or municipality.

(h) A cemetery corporation, including a corporation described by Subsection (d), that does not operate as a perpetual care cemetery in accordance with Chapter 712 may not use the words "perpetual care" or "endowment care," or any other term that suggests "perpetual care" or "endowment care" standards, in:

- (1) the cemetery's name; or
- (2) any advertising relating to the cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 9, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 405, Sec. 1, eff. Sept. 1, 2001.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 3, eff. September 1, 2013.

Sec. 711.022. FORMATION OF NONPROFIT CEMETERY CORPORATION BY PLOT OWNERS. (a) Plot owners may organize a nonprofit corporation to receive title to land previously dedicated to cemetery purposes.

(b) The plot owners must:

(1) publish notice of the time and place of the organizational meeting in a newspaper in the county, if there is a newspaper, for 30 days before the date of the meeting; and

(2) post written notice at the cemetery of the time and place of the meeting for 30 days before the date of the meeting.

(c) A majority of the plot owners present and voting at the meeting shall decide whether to incorporate and to convey the land to the corporation.

(d) If the plot owners vote to incorporate, at the same meeting they shall select from the plot owners a board of directors to be named in the charter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 711.023. RIGHTS OF PLOT OWNERS IN CEMETERY OPERATED BY NONPROFIT CEMETERY CORPORATION. (a) A person who purchases a plot from a nonprofit cemetery corporation is a shareholder of the corporation. The person may vote in the election of corporate officers and on other matters to the same extent as a stockholder in another corporation.

(b) An owner of a plot in a cemetery operated by a nonprofit corporation is a shareholder in any corporation that owns the cemetery. The plot owner may exercise the rights and privileges of a shareholder, whether the owner acquired title to the plot from the corporation or before the corporation was organized.

(c) This section does not apply to a nonprofit cemetery corporation formed before September 1, 1963, if:

(1) the corporation was formed under Subdivision 87, Article 1302, Revised Statutes; and

(2) the charter or the articles of incorporation of the corporation provide that the corporation has no capital stock.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2003, 78th Leg., ch. 1284, Sec. 1, eff. Sept. 1, 2003.

Sec. 711.024. AUTHORITY OF NONPROFIT CEMETERY CORPORATION. A nonprofit cemetery corporation organized by plot owners may divide cemetery property into lots and subdivisions for cemetery purposes and charge assessments on the property for the purposes of general improvement and maintenance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

#### SUBCHAPTER C. CEMETERY ORGANIZATIONS

Sec. 711.031. RULES; CIVIL PENALTY. (a) A cemetery organization may adopt and enforce rules:

(1) concerning the use, care, control, management, restriction, and protection of the cemetery operated by the cemetery organization;

(2) to restrict the use of cemetery property;

(3) to regulate the placement, uniformity, class, and kind of markers, monuments, effigies, and other structures in any part of the cemetery;

(4) to regulate the planting and care of plants in the cemetery;

(5) to prevent the interment of remains not entitled to be interred in the cemetery;

(6) to prevent the use of a plot for a purpose that violates the cemetery organization's restrictions;

(7) to regulate the conduct of persons on cemetery property and to prevent improper meetings at the cemetery; and

(8) for other purposes the directors consider necessary for the proper conduct of the cemetery organization's business, and for the protection of the premises and the principles, plans, and ideals on which the cemetery was organized.

(b) Rules adopted under this section must be plainly printed or typed and maintained for inspection in the cemetery organization's office or another place in the cemetery prescribed by the directors.

(c) The directors may prescribe a penalty for the violation of a rule adopted under this section. The cemetery organization may recover the amount of the penalty in a civil action.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 11, eff. Sept. 1, 1993.

Sec. 711.032. DISCRIMINATION BY RACE, COLOR, OR NATIONAL ORIGIN PROHIBITED. (a) A cemetery organization may not adopt or enforce a rule that prohibits interment because of the race, color, or national origin of a decedent.

(b) A provision of a contract entered into by a cemetery organization or of a certificate of ownership or other instrument of conveyance issued by a cemetery organization that prohibits interment in a cemetery because of the race, color, or national origin of a decedent is void.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 13, eff. Sept. 1, 1993.

Sec. 711.033. PROPERTY ACQUISITION BY CEMETERY ORGANIZATION; RECORDING TITLE. (a) A cemetery organization may acquire by purchase, donation, or devise property consisting of land, a mausoleum, a crematory and columbarium, or other property in which remains may be interred under law.

(b) A cemetery organization operating a cemetery located and operated in accordance with the distance requirements prescribed in Section [711.008](#) may acquire land adjacent to the cemetery for cemetery purposes. In this subsection, "adjacent" means that some part of the property to be acquired has a common boundary with the existing cemetery, or a common boundary with a public easement, a utility easement, or a railroad right-of-way, some part of which has a common boundary with the cemetery. In no event shall the closest points of the property to be acquired and the cemetery be more than 200 feet apart.

(c) A cemetery organization that acquires property may record

title to its property with the county clerk of the county in which the property is located if its president and secretary or other authorized officer acknowledge a declaration executed by the cemetery organization that describes the property and declares the cemetery organization's intention to use the property or a part of the property for interment purposes.

(d) Filing under Subsection (b) is constructive notice as of the date of the filing of the use of the property for interment.

(e) A cemetery organization may by condemnation acquire property in which remains may be interred, and the acquisition of that property is for a public purpose.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 14, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 200, Sec. 2, eff. May 21, 2001.

Sec. 711.034. DEDICATION. (a) A cemetery organization that acquires property for interment purposes shall:

(1) in the case of land, survey and subdivide the property into gardens or sections, with descriptive names or numbers, and make a map or plat of the property showing the plots contained within the perimeter boundary and showing a specific unique number for each plot; or

(2) in the case of a mausoleum or a crematory and columbarium, make a map or plat of the property delineating sections or other divisions with descriptive names and numbers and showing a specific unique number for each crypt, lawn crypt, or niche.

(b) The cemetery organization shall file the map or plat with the county clerk of each county in which the property or any part of the property is located.

(c) The cemetery organization shall file with the map or plat a written certificate or declaration of dedication of the property delineated by the map or plat, dedicating the property exclusively to cemetery purposes. The certificate or declaration must be:

(1) in a form prescribed by the directors or officers of the cemetery organization;

(2) signed by the president or vice-president and the secretary of the cemetery organization, or by another person authorized by the directors; and

(3) acknowledged.

(d) Filing a map or plat and a certificate or declaration under this section dedicates the property for cemetery purposes and is constructive notice of that dedication.

(e) The certificate or declaration may contain a provision permitting the directors by order to resurvey and change the shape and size of the property for which the associated map or plat is filed if that change does not disturb any interred remains. Except as provided by Subsection (e-1), if a change is made, the cemetery organization shall:

(1) file an amended map or plat not later than the last day of the next calendar quarter; and

(2) indicate any change in a specific unique number assigned to a plot, crypt, lawn crypt, or columbarium niche.

(e-1) A cemetery organization that holds a certificate of authority to operate a perpetual care cemetery under Chapter 712 is not required to file an amended map or plat if:

(1) the only change to the property is:

(A) the placement of a cremains receptacle that contains not more than four niches on a plot; or

(B) the alteration of an existing cremains receptacle on a plot; and

(2) the cemetery organization maintains records, as required by rules adopted by the Finance Commission of Texas, that specify the location of the cremains receptacle.

(f) The county clerk shall number and file the map or plat and record the certificate or declaration in the county deed records.

(g) A cemetery association is civilly liable to the state in an amount not to exceed \$1,000 for each map or plat that fails to comply with Subsection (a), (b), (c), or (e).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 15, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 502, Sec. 1, eff. Oct. 1, 1995.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 4, eff. September 1, 2013.

Sec. 711.035. EFFECT OF DEDICATION. (a) Property may be

dedicated for cemetery purposes, and the dedication is permitted in respect for the dead, for the disposition of remains, and in fulfillment of a duty to and for the benefit of the public.

(b) Dedication of cemetery property and title to the exclusive right of sepulture of a plot owner are not affected by the dissolution of the cemetery organization, nonuse by the cemetery organization, alienation, encumbrance, or forced sale of the property.

(c) Dedication of cemetery property may not be invalidated because of a violation of the law against perpetuities or the law against the suspension of the power of alienation of title to or use of property.

(d) A railroad, street, road, alley, pipeline, telephone, telegraph, electric line, wind turbine, cellular telephone tower, or other public utility or thoroughfare may not be placed through, over, or across a part of a dedicated cemetery without the consent of:

(1) the directors of the cemetery organization that owns or operates the cemetery; or

(2) at least two-thirds of the owners of plots in the cemetery.

(e) All property of a dedicated cemetery, including a road, alley, or walk in the cemetery:

(1) is exempt from public improvements assessments, fees, and public taxation; and

(2) may not be sold on execution or applied in payment of debts due from individual owners and plots.

(f) Dedicated cemetery property shall be used exclusively for cemetery purposes until the dedication is removed by court order or until the maintenance of the cemetery is enjoined or abated as a nuisance under Section [711.007](#).

(g) Property is considered to be dedicated cemetery property if:

(1) one or more human burials are present on the property; or

(2) a dedication of the property for cemetery use is recorded in the deed records of the county where the land is located.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 16, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. [2927](#)), Sec. 9, eff.

September 1, 2009.

Sec. 711.036. REMOVAL OF DEDICATION. (a) A cemetery organization may petition a district court of the county in which its dedicated cemetery is located to remove the dedication with respect to all or any portion of the cemetery if:

(1) all the remains have been removed from that portion of the cemetery where the dedication is to be removed; or

(2) no interments were made in that portion of the cemetery where the dedication is to be removed and that portion of the cemetery is not used or necessary for interment purposes.

(b) An owner of land adjacent to a cemetery for which a cemetery organization or other governing body does not exist may petition a district court of the county in which the cemetery is located to remove any human remains and the dedication for all or any portion of the cemetery. In addition to the notice required by Section 711.004, notice of a petition filed under this subsection must be given to the Texas Historical Commission and to the county historical commission of the county in which the cemetery is located. The Texas Historical Commission and the county historical commission may intervene and become parties to the suit. Unknown next of kin of deceased persons buried in the cemetery shall be served by publication of a notice in a newspaper of general circulation in the county in which the cemetery is located, or if there is not a newspaper of general circulation in the county, in a newspaper of general circulation in an adjacent county. A reasonable good faith effort shall be made to remove all remains and monuments from the cemetery or that portion of the cemetery for which the dedication is to be removed.

(c) The court shall order the removal of the human remains and the dedication on notice and proof satisfactory to the court that the removal is in the public interest.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 17, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 10, eff. September 1, 2009.

Sec. 711.037. LIEN AGAINST CEMETERY PROPERTY. (a) A cemetery organization by contract may incur indebtedness as required to conduct its business and may secure the indebtedness by mortgage, deed of trust, or other lien against its property.

(b) A mortgage, deed of trust, or other lien placed on dedicated cemetery property, or on cemetery property that is later dedicated with the consent of the holder of the lien, does not affect the dedication and is subject to the dedication. A sale on foreclosure of the lien is subject to the dedication of the property for cemetery purposes.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 18, eff. Sept. 1, 1993.

Sec. 711.038. SALE OF PLOTS BY CEMETERY ORGANIZATIONS. (a) A cemetery organization may sell and convey the exclusive right of sepulture in a plot:

(1) after a map or plat and a certificate or declaration of dedication are filed as provided by Section [711.034](#);

(2) subject to the rules of the cemetery organization and the restrictions in the certificate of ownership or other instrument of conveyance; and

(3) after payment in full of the purchase price of the plot.

(b) A certificate of ownership or other instrument evidencing the conveyance of the exclusive right of sepulture by a cemetery organization must be signed by the president or vice-president and the secretary or other officers authorized by the cemetery organization.

(c) A conveyance of the exclusive right of sepulture must be filed and recorded in the cemetery organization's office.

(d) A plot or a part of a plot that is conveyed as a separate plot by a certificate of ownership or other instrument may not be divided without the consent of the cemetery organization.

(e) A person who is an officer, agent, or employee of the cemetery organization or its affiliate and who is exempt from registration under Subchapter C-1 is not required to be licensed or registered to sell a plot in a dedicated cemetery.

(f) A cemetery organization may not resell the exclusive right

of sepulture in a plot unless the exclusive right of sepulture has been reacquired by the cemetery organization. A sanction or other penalty may not be imposed on a cemetery organization that violates this subsection unless:

(1) the state agency authorized to enforce this section provides the cemetery organization written notice of the violation; and

(2) the cemetery organization does not correct the violation before the 91st day after the date on which the cemetery organization received the notice.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 19, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 5, eff. September 1, 2009.

Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 3, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 4, eff. September 1, 2013.

Sec. 711.0381. SALE OR RESALE OF PLOTS BY CERTAIN PERSONS.

(a) A person may not act as a cemetery broker in the sale or resale of the exclusive right of sepulture in a plot unless the person is registered as a cemetery broker under Subchapter C-1 or is exempt from registration under Subchapter C-1.

(b) Resale of the exclusive right of sepulture in a plot is subject to the rules of the cemetery organization and any restrictions in the certificate of ownership, quitclaim agreement, or other instrument of conveyance. A quitclaim agreement or other instrument evidencing the conveyance of the exclusive right of sepulture must be:

(1) in a form authorized by or otherwise acceptable to the cemetery organization, subject to Subsection (c);

(2) signed by:

(A) the grantee named in the certificate of ownership or other instrument of conveyance as filed and recorded in the cemetery organization's office in accordance with Section 711.038 or 711.039(g)(2), as the seller or transferor;

(B) the designated purchaser or transferee; and

(C) each cemetery broker or other agent assisting in the transfer of the interment rights; and

(3) filed and recorded with the cemetery organization not later than the third business day after the date of the sale.

(c) On request of a person acting as a cemetery broker, a cemetery organization shall provide its rules, conveyance forms, and written guidelines and procedures for brokered sales, if any.

(d) The resale of the exclusive right of sepulture in a group of interment rights that were conveyed collectively may not be divided without the consent of the cemetery organization.

(e) A person acting as a cemetery broker that sells or resells the right of sepulture in a plot shall collect and remit to the cemetery organization:

(1) all fees required by law; and

(2) any other fee required by the rules of the cemetery organization, subject to Subsection (f).

(f) A fee required by a rule of the cemetery organization for the sale or resale of the right of sepulture in a plot under this section may not exceed the fee charged by the cemetery organization on the sale of the right of sepulture in a plot under Section [711.038](#).

(g) A person acting as a cemetery broker must keep a record of each sale or resale under this section. The record must include:

(1) the name and address of the purchaser;

(2) the date of the purchase;

(3) a copy of the purchase agreement, with the name and address of the cemetery;

(4) a specific description of the interment rights;

(5) the purchase price;

(6) the amount of fees collected and remitted in accordance with Subsection (e); and

(7) information on the disposal of the purchase agreement, including whether the agreement was conveyed, canceled, or voided.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. [52](#)), Sec. 5, eff. January 1, 2014.

Sec. 711.039. RIGHTS OF INTERMENT IN PLOT. (a) A plot in which the exclusive right of sepulture is conveyed is presumed to be

the separate property of the person named as grantee in the certificate of ownership or other instrument of conveyance.

(b) The spouse of a person to whom the exclusive right of sepulture in a plot is conveyed has a vested right of interment of the spouse's remains in the plot while the spouse is married to the plot owner or if the spouse is married to the plot owner at the time of the owner's death.

(c) An attempted conveyance or other action without the joinder or written, attached consent of the spouse of the plot owner does not divest the spouse of the vested right of interment.

(d) The vested right of interment is terminated:

(1) on the final decree of divorce between the plot owner and the owner's former spouse unless the decree provides otherwise; or

(2) when the remains of the person having the vested right are interred elsewhere.

(e) Unless a plot owner who has the exclusive right of sepulture in a plot and who is interred in that plot has made a specific disposition of the plot by express reference to the plot in the owner's will or by written declaration filed and recorded in the office of the cemetery organization:

(1) a grave, niche, or crypt in the plot shall be reserved for the surviving spouse of the plot owner; and

(2) the owner's children, in order of need, may be interred in any remaining graves, niches, or crypts of the plot without the consent of a person claiming an interest in the plot.

(f) The surviving spouse or a child of an interred plot owner may each waive his right of interment in the plot in favor of a relative of the owner or relative of the owner's spouse. The person in whose favor the waiver is made may be interred in the plot.

(g) The exclusive right of sepulture in an unused grave, niche, or crypt of a plot in which the plot owner has been interred may be conveyed only by:

(1) specific disposition of the unused grave, niche, or crypt by express reference to it in a will or by written declaration of the plot owner filed and recorded in the office of the cemetery organization; or

(2) the surviving spouse, if any, and the heirs-at-law of

the owner.

(h) Unless a deceased plot owner who has the exclusive right of sepulture in a plot and who is not interred in the plot has otherwise made specific disposition of the plot, the exclusive right of sepulture in the plot, except the one grave, niche, or crypt reserved for the surviving spouse, if any, vests on the death of the owner in the owner's heirs-at-law and may be conveyed by them.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 20, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 502, Sec. 1, eff. Sept. 1, 2001.

Sec. 711.0395. MULTIPLE INTERMENTS IN SAME PLOT. A cemetery organization may not make more than one interment in a plot unless each owner of the plot consents to the interment.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 6, eff. September 1, 2009.

Sec. 711.040. MULTIPLE OWNERS OF PLOT. Two or more owners of a plot may designate a person to represent the plot and file with the cemetery organization written notice of the designation. If notice is not filed, the cemetery organization may inter or permit an interment in the plot at the request or direction of a registered co-owner of the plot.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 21, eff. Sept. 1, 1993.

Sec. 711.041. ACCESS TO CEMETERY. (a) Any person who wishes to visit a cemetery or private burial grounds for which no public ingress or egress is available shall have the right to reasonable ingress and egress for the purpose of visiting the cemetery or private burial grounds. This right of access extends only to visitation during the hours determined by the owner or owners of the lands under Subsection (b) or at a reasonable time as provided by Subsection (c) and only for purposes usually associated with cemetery visits.

(b) The owner or owners of the lands surrounding the cemetery

or private burial grounds may designate the routes of reasonable ingress and egress and reasonable hours of availability.

(c) At a time other than the time provided by Subsection (b), the owner or owners of the lands surrounding a cemetery or private burial grounds must allow a person to enter and exit the owner's land for the purpose of visiting the cemetery or private burial grounds if:

(1) the person provides written notice to the owner or owners of the lands surrounding the cemetery or private burial grounds of the person's visit;

(2) the person provides the notice required by Subdivision (1) not later than the 14th day before the date the person wishes to visit the cemetery; and

(3) the time of the visit is reasonable.

Added by Acts 1993, 73rd Leg., ch. 634, Sec. 22, eff. Sept. 1, 1993.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 7, eff. September 1, 2009.

Sec. 711.042. AUTHORITY OF NONPROFIT CEMETERY ORGANIZATION. A nonprofit cemetery organization organized by plot owners may:

(1) divide cemetery property into lots and subdivisions for cemetery purposes;

(2) charge assessments on the property for the purposes of general improvement and maintenance; and

(3) take any action, to the same extent and for the same purposes as a for-profit cemetery corporation, that is necessary to carry out the organization's business purposes, which include the business purposes necessarily incident to the burial and disposal of human remains, including any action necessary to:

(A) convey property or other assets of the organization;

(B) borrow money;

(C) pledge or mortgage the property or other assets of the organization to secure the organization's indebtedness or other obligations;

(D) lend money and take security for the loan in furtherance of its business purposes; and

(E) conduct any business activity or business directly or by or through one or more subsidiaries.

Added by Acts 1999, 76th Leg., ch. 703, Sec. 2, eff. June 18, 1999.

#### SUBCHAPTER C-1. CEMETERY BROKER REGISTRATION

Sec. 711.045. DEFINITIONS. In this subchapter:

- (1) "Commission" means the Finance Commission of Texas.
- (2) "Commissioner" means the banking commissioner of Texas.
- (3) "Department" means the Texas Department of Banking.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 6, eff. January 1, 2014.

Sec. 711.046. CEMETERY BROKER REGISTRATION. (a) To register under this subchapter, a cemetery broker shall file with the department a sworn, notarized statement that contains:

- (1) the name and street address of the cemetery broker;
- (2) the name, street address, and telephone number of the representative of the cemetery broker to be contacted regarding a written complaint; and
- (3) any Internet or other electronic mail address of the cemetery broker.

(b) The registration of a cemetery broker is valid until withdrawn or revoked. Periodic renewal of the registration is not required.

(c) A registered cemetery broker shall update the information contained in the registration statement not later than the 60th day after the date the information changes.

(d) The department may charge a cemetery broker a reasonable fee to cover the costs of filing and maintaining the registration statement and administering this chapter. The administration fee may not exceed \$100 per year.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 6, eff. January 1, 2014.

Sec. 711.047. EXEMPTIONS. This subchapter does not apply to a person offering to sell or selling the exclusive right of sepulture in a plot if the person is:

(1) an officer, agent, employee, or affiliate of the cemetery organization in which the plot is located, acting at the direction or under the control of the cemetery organization;

(2) an employee of a registered cemetery broker;

(3) with respect to the specific plot for sale:

(A) a grantee named in the certificate of ownership or other instrument of conveyance for the plot as filed and recorded in the cemetery organization's office under Section 711.038;

(B) a spouse or other heir of the named grantee as described by Section 711.039;

(C) an executor, administrator, or guardian of the named grantee appointed by court order; or

(D) an attorney-in-fact for the named grantee under a durable power of attorney if the person is not otherwise engaged in the business of a cemetery broker and does not solicit appointment as attorney-in-fact for the purpose of offering to sell or selling the exclusive right of sepulture of the named grantee; or

(4) otherwise exempt in accordance with rules adopted by the commission as necessary to protect the public health and safety.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 6, eff. January 1, 2014.

Sec. 711.048. COMPLAINTS. (a) A cemetery broker is subject to rules adopted under Section 11.307, Finance Code, regarding the manner in which the cemetery broker provides consumers with information on how to file complaints with the department. The rules must be consistent with the obligations imposed by this section.

(b) If the department receives a signed written complaint from a person concerning a cemetery broker, the department shall provide written notification of the complaint to the cemetery broker's designated representative not later than the 31st day after the date the complaint was received and provide a copy of the complaint to the representative. The department may:

(1) require the cemetery broker to resolve the complaint or to provide the department with a response to the complaint; or

(2) provide written direction requiring the cemetery broker to take specific action to resolve the complaint.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 6, eff. January 1, 2014.

Sec. 711.049. TERMINATION OF REGISTRATION. (a) A cemetery broker may withdraw the cemetery broker's registration at any time.

(b) After notice and opportunity for a hearing, the commissioner may revoke the registration of a registered cemetery broker that:

(1) fails to pay the annual administration fee and fails to cure the default not later than the 30th day after the date written notice of the default is mailed by the department to the cemetery broker;

(2) fails or refuses to comply with the department's written request for a response to a complaint; or

(3) the commissioner concludes, after considering a complaint filed under this subchapter, has engaged in an intentional course of conduct that:

(A) violates federal or state law; or

(B) constitutes improper, fraudulent, or dishonest dealings.

(c) The commissioner shall state the basis of the decision in an order revoking the registration of a cemetery broker. The cemetery broker may appeal an order revoking registration in the manner provided by Chapter 2001, Government Code.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 6, eff. January 1, 2014.

#### SUBCHAPTER D. ENFORCEMENT

Sec. 711.051. ENFORCEMENT BY ATTORNEY GENERAL; PROCEEDINGS TO FORFEIT CHARTER FOR NONCOMPLIANCE. (a) A cemetery corporation that violates this chapter or Chapter 712 forfeits the corporation's charter and right to do business in this state unless the corporation corrects the violation before the 30th day after the date of receiving notice of the violation from the attorney general.

(b) When the attorney general learns that a cemetery corporation has violated this chapter or Chapter 712, the attorney general shall serve notice of the violation on the corporation.

(c) If the violation is not corrected before the 30th day after the date of the notice, the attorney general shall bring suit or quo warranto proceedings for the forfeiture of the corporation's charter and dissolution of the corporation in a district court of Travis County or of any county in which the violation occurred.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 5, eff. September 1, 2013.

Sec. 711.0515. ENFORCEMENT BY ATTORNEY GENERAL; INJUNCTIVE RELIEF. In addition to bringing an action under Section 711.051, the attorney general at the request of the Texas Funeral Service Commission may bring an action for injunctive relief to enforce this chapter or a rule or order adopted by the commission under this chapter.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 8, eff. September 1, 2009.

Added by Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. 2927), Sec. 11, eff. September 1, 2009.

Reenacted by Acts 2011, 82nd Leg., R.S., Ch. 91 (S.B. 1303), Sec. 12.008, eff. September 1, 2011.

Sec. 711.052. CRIMINAL PENALTIES.

Text of subsection as amended by Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 6

(a) A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person:

(1) engages in a business for cemetery purposes in this state other than through a corporation organized for that purpose, if a corporation is required by law;

(2) fails or refuses to keep records of interment as

required by Sections [711.003](#) and [711.004](#);

(3) sells, offers to sell, or advertises for sale a plot or the exclusive right of sepulture in a plot for purposes of speculation or investment;

(4) represents through advertising or printed material that a retail department will be established for the resale of the plots of plot purchasers, that specific improvements will be made in the cemetery, or that specific merchandise or services will be furnished to a plot owner, unless adequate funds or reserves are created by the cemetery organization for the represented purpose;

(5) makes more than one interment in a plot in a cemetery operated by a cemetery organization other than as provided by Section [711.0395](#); or

(6) removes remains from a plot in a cemetery operated by a cemetery organization without complying with Section [711.004](#).

Text of subsection as amended by Acts 2013, 83rd Leg., R.S., Ch. 220  
(H.B. [52](#)), Sec. 7

(a) A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person:

(1) engages in a business for cemetery purposes in this state other than through a corporation organized for that purpose, if a corporation is required by law;

(2) fails or refuses to keep records of interment as required by Sections [711.003](#) and [711.004](#);

(3) sells, offers to sell, or advertises for sale a plot or the exclusive right of sepulture in a plot for purposes of speculation or investment;

(4) represents through advertising or printed material that a retail department will be established for the resale of the plots of plot purchasers, that specific improvements will be made in the cemetery, or that specific merchandise or services will be furnished to a plot owner, unless adequate funds or reserves are created by the cemetery organization for the represented purpose;

(5) offers or receives monetary inducement to solicit

business for a cemetery broker;

(6) fails or refuses to keep records of sales or resales or to collect and remit fees as required by Section [711.0381](#); or

(7) fails or refuses to register as a cemetery broker as required by Subchapter C-1.

(b) A cemetery organization or an officer, agent, or employee of the cemetery organization commits an offense if the cemetery organization, officer, agent, or employee offers any inducement, pecuniary or otherwise, to any person or entity for the purpose of securing or attempting to secure business for that cemetery organization. This subsection does not prohibit the offering or payment by a cemetery organization of any such inducement, pecuniary or otherwise, to an officer, employee, agent, subcontractor, or representative of the cemetery organization.

(c) A cemetery organization or an officer, agent, or employee of the cemetery organization commits an offense if the cemetery organization, officer, agent, or employee of a cemetery organization offers a free plot in a drawing, in a lottery, or in another manner, unless the offer is for the immediate burial of an indigent person.

(d) Except as provided by this subsection, an offense under this section is a Class A misdemeanor. An offense under Subsection (a) (5) or (6) is a felony of the second degree.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 217, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 23, eff. Sept. 1, 1993.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. [661](#)), Sec. 6, eff. September 1, 2013.

Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. [52](#)), Sec. 7, eff. September 1, 2013.

Sec. 711.0521. ACCESS TO CEMETERIES; CRIMINAL PENALTIES. (a) A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person interferes with a person's reasonable right to ingress and egress under Section [711.041](#).

(b) An offense under this section is a Class C misdemeanor.

Added by Acts 2009, 81st Leg., R.S., Ch. 263 (H.B. 1468), Sec. 9, eff. September 1, 2009.

Sec. 711.053. DEFINITION. In this subchapter, "commissioner" means the banking commissioner of Texas.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 35, eff. Sept. 1, 2003.

Sec. 711.054. ENFORCEMENT BY FINANCE COMMISSION OF TEXAS. The Finance Commission of Texas may use remedies available under Chapter 712 to enforce a section listed under Section 711.012(a) relating to perpetual care cemeteries.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 35, eff. Sept. 1, 2003.

Sec. 711.055. ENFORCEMENT BY COMMISSIONER. (a) Chapter 2001, Government Code, applies to a proceeding under this section.

(b) After notice and opportunity for hearing, the commissioner may impose an administrative penalty on a person who:

(1) violates this chapter or a final order of the commissioner or rule of the Finance Commission of Texas and does not correct the violation before the 31st day after the date the person receives written notice of the violation from the Texas Department of Banking; or

(2) engages in a pattern of violations, as determined by the commissioner.

(c) The amount of the penalty for each violation may not exceed \$1,000 for each day the violation occurs.

(d) In determining the amount of the penalty, the commissioner shall consider the seriousness of the violation, the person's history of violations, and the person's good faith in attempting to comply with this chapter. The commissioner may collect the penalty in the same manner that a money judgment is enforced in district court.

(e) In addition to any penalty that may be imposed under Subsection (b), the commissioner may bring a civil action against a person to enjoin a violation described in Subsection (b) that has not been corrected within 30 days after receipt by the person of written notice of the violation from the commissioner. The civil action may

be brought in the district court of the county in which the cemetery is operated.

(f) The commissioner may issue an order to cease and desist if a violation described in Subsection (b) has not been corrected within 30 days after receipt by the person of written notice of the violation from the commissioner. Any order proposed under this subsection shall be served on the person, shall state the grounds for the proposed order with reasonable certainty, and shall state the proposed effective date, which may not be less than 15 days after receipt by the person. Unless the person requests a hearing within 15 days after the receipt, the order is effective as proposed.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 35, eff. Sept. 1, 2003.

Sec. 711.056. PATTERN OF WILFUL DISREGARD. (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 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.

(b) For the purposes of this section, violations corrected as provided by Section [711.055](#) may be included in determining whether a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission exists.

Added by Acts 2003, 78th Leg., ch. 562, Sec. 35, eff. Sept. 1, 2003.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. [52](#)), Sec. 8, eff. September 1, 2013.

Sec. 711.057. 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 beneficiary under a sale of the exclusive right of sepulture in a plot.

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

(c) The person named in the order may request in writing an opportunity for 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 before the 22nd 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.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 9, eff. September 1, 2013.

Sec. 711.058. RESTITUTION. The commissioner may issue an order to a person requiring restitution if, after notice and opportunity for hearing, the commissioner finds that the person:

- (1) failed to remit a fee in accordance with Section [711.0381](#); or
- (2) misappropriated, converted, or illegally withheld or failed or refused to pay on demand money entrusted to the person that belongs to a cemetery organization under an instrument of conveyance.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 9, eff. September 1, 2013.

Sec. 711.059. SEIZURE OF ACCOUNTS AND RECORDS. (a) The commissioner may issue an order to seize accounts in which funds from the sale or resale of the exclusive right of sepulture in a plot, including earnings, may be held and may issue an order to seize the records that relate to the sale or resale of the exclusive right of sepulture in a plot if the commissioner finds, by examination or other credible evidence, that the person:

- (1) failed to remit a fee in accordance with Section [711.0381](#);
- (2) misappropriated, converted, or illegally withheld or

failed or refused to pay on demand money entrusted to the person that belongs to a cemetery organization under an instrument of conveyance;

(3) refused to submit to examination by the department;

(4) was the subject of an order to cancel, suspend, or refuse a registration under Subchapter C-1; or

(5) is required to register under Subchapter C-1 and is not registered or has transferred the ownership of the business that required registration to another person who is not registered.

(b) An order shall be served on the person named in the order by certified mail, return receipt requested, to the last known address of the person.

(c) An order takes effect immediately and remains in effect unless stayed by the commissioner, if the commissioner finds that immediate and irreparable harm is threatened to the public or a beneficiary under a sale of the exclusive right of sepulture in a plot. If such a threat does not exist, the order must state the effective date, which may not be before the 16th day after the date the order is mailed.

(d) An emergency order remains in effect unless stayed by the commissioner. The person named in the order may request in writing an opportunity for a hearing to show that the emergency order should be stayed. On receipt of the request, the commissioner shall set a time before the 22nd day after the date the commissioner received the request, unless extended at the request of the person named in the order. The hearing is an administrative hearing relating to the findings that support immediate effect of the order.

(e) A nonemergency order takes effect as proposed unless the person named in the order requests a hearing not later than the 15th day after the date the order is mailed.

(f) After the issuance of an order under this section, the commissioner may initiate an administrative claim for ancillary relief, including a claim for:

(1) costs incurred in the administration, transfer, or other disposition of the seized assets and records; or

(2) costs reasonably expected to be incurred in connection with the administration and performance of any outstanding certificate of ownership or other instrument of conveyance that is a part of a sale by the person subject to the order.

(g) The remedy provided by Subsection (f) is not exclusive. The commissioner may seek an additional remedy authorized under this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 9, eff. September 1, 2013.

#### SUBCHAPTER E. LAWN CRYPTS

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
- (6) 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 a private estate in accordance with Section 711.034.

Added by Acts 1997, 75th Leg., ch. 1389, Sec. 4, eff. Sept. 1, 1997.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 3, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 3, eff. September 1, 2011.

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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 4, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 4, eff. September 1, 2011.

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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 4, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 4, eff. September 1, 2011.

#### SUBCHAPTER F. POWERS AND DUTIES OF DEPARTMENT

##### RELATING TO CEMETERY BROKERS

Sec. 711.081. DEFINITIONS. In this subchapter:

- (1) "Commission" means the Finance Commission of Texas.
- (2) "Commissioner" means the banking commissioner of Texas.
- (3) "Department" means the Texas Department of Banking.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 10, eff. September 1, 2013.

Sec. 711.082. ADMINISTRATION; FEES. (a) The department shall administer Subchapters C and C-1 relating to cemetery brokers.

(b) The commission may adopt reasonable rules concerning:

(1) fees to defray the cost of administering Subchapters C and C-1;

(2) the retention and inspection of records relating to the sale or resale of the exclusive right of sepulture in a plot;

(3) changes in the management or control of a cemetery broker's business; and

(4) any other matter relating to the enforcement and administration of Subchapters C and C-1.

(c) A fee set by the commission may not produce unnecessary fund balances.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 10, eff. September 1, 2013.

Sec. 711.083. RECORDS; EXAMINATION. (a) A person acting as a cemetery broker shall maintain records in accordance with this subchapter and Section [711.0381](#).

(b) The department shall examine the records of each person acting as a cemetery broker if the commissioner determines the examination is necessary to:

(1) safeguard the interests of purchasers and beneficiaries of the exclusive right of sepulture in a plot; and

(2) efficiently enforce applicable law.

(c) A person may maintain and provide a record required to be maintained under this section in an electronic format if the record is reliable and can be retrieved in a timely manner.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 10, eff. September 1, 2013.

Sec. 711.084. EXAMINATION FEE. (a) For each examination conducted under Section [711.083](#), the commissioner or the commissioner's agent shall impose on the cemetery broker a fee in an amount set by the commission under Section [711.082](#).

(b) The amount of the fee must be sufficient to cover:

(1) the cost of the examination, including:

(A) salary and travel expenses for department employees, including travel to and from the place where the records are kept; and

(B) any other expense necessarily incurred in conducting the examination;

(2) the equitable or proportionate cost of maintaining and operating the department; and

(3) the cost of enforcing this subchapter.

Added by Acts 2013, 83rd Leg., R.S., Ch. 220 (H.B. 52), Sec. 10, eff. September 1, 2013.

HEALTH AND SAFETY CODE

TITLE 8. DEATH AND DISPOSITION OF THE BODY

SUBTITLE C. CEMETERIES AND CREMATORIES

CHAPTER 712. PERPETUAL CARE CEMETERIES

SUBCHAPTER A. GENERAL PROVISIONS

Sec. 712.001. DEFINITIONS. (a) The definitions provided by Section 711.001 apply to this chapter.

(b) In this chapter:

(1) "Banking department" or "department" means the Banking Department of Texas.

(2) "Commissioner" means the Banking Commissioner of Texas.

(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 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.

(4) "Fund" means a perpetual care trust fund established by one or more corporations under this chapter or any corresponding statute in effect before September 1, 1993.

(4-a) "Preconstruction trust" means a trust established by a corporation under this chapter for the purpose of administering proceeds from sales of undeveloped mausoleum spaces.

(4-b) "Preconstruction trustee" means the trustee of a preconstruction trust.

(5) "Trustee" means the trustee of a cemetery perpetual care trust fund.

(6) "Undeveloped mausoleum space" means a crypt or niche in a mausoleum or mausoleum section that is designed to contain at least 10 crypt or niche interments and that is not ready for the interment of human remains or cremated remains on the date an interment right pertaining to the mausoleum space is sold. The term does not include a private mausoleum or mausoleum section in which all mausoleum spaces are intended to be sold under a single

contract.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 24, eff. Sept. 1, 1993.

Amended by:

Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 1, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 5, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 5, eff. September 1, 2011.

Sec. 712.002. EXEMPTIONS FROM CHAPTER. This chapter does not apply to:

(1) a family, fraternal, or community cemetery that is not larger than 10 acres;

(2) an unincorporated association of plot owners not operated for profit;

(3) a church, a religious society or denomination, or an entity solely administering the temporalities of a church or religious society or denomination; or

(4) a public cemetery owned by this state, a county, or a municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 25, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 562, Sec. 36, eff. Sept. 1, 2003.

Sec. 712.003. REGISTRATION REQUIRED; MINIMUM CAPITAL.

(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 filed with the secretary of state showing:

(1) subscriptions and payments in cash for 100 percent of the entity's ownership or membership interests;

(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.

(b) A corporation chartered on or after September 5, 1955, and before September 1, 1993, must have a minimum capital of:

(1) \$15,000, if the cemetery serves a municipality with a population of less than 15,000;

(2) \$30,000, if the cemetery serves a municipality with a population of 15,000 to 25,000; or

(3) \$50,000, if the cemetery serves a municipality with a population of at least 25,000.

(c) A corporation chartered on or after September 1, 1993, and before September 1, 2013, must have:

(1) a minimum capital of \$75,000; and

(2) a minimum of \$75,000 in capital for each certificate of authority to operate a perpetual care cemetery issued to the corporation on or after September 1, 2013.

(c-1) A corporation whose certificate of formation takes effect on or after September 1, 2013, must have a minimum of \$75,000 in capital for each certificate of authority to operate a perpetual care cemetery issued to the corporation.

(d) A nonprofit association or corporation operated solely for the benefit of plot owners seeking to convert a cemetery to a perpetual care cemetery under this chapter is not required to meet the requirements prescribed by this section and Section 712.004 if the cemetery has existed for at least 75 years and the association or corporation has operated the cemetery for the preceding 10 years.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 218, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 26, eff. Sept. 1, 1993.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. [2495](#)), Sec. 6, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. [2495](#)), Sec. 7, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. [1167](#)), Sec. 6, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. [1167](#)), Sec. 7, eff.

September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 7, eff. September 1, 2013.

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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.

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), the commissioner may instruct the secretary of state to remove the corporation from the secretary's active records or cancel the corporation's registration. On an instruction from the commissioner under this subsection, the secretary of state shall remove the corporation from the secretary's active records or cancel the corporation's registration and serve notice of the cancellation on the corporation by registered or certified letter, addressed to the corporation's address.

(c) A fee or cost paid under this chapter in connection with an application or renewal is not refundable.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.

Sec. 712.0034. QUALIFICATIONS FOR CERTIFICATE OF AUTHORITY; INVESTIGATION. (a) The commissioner may investigate an applicant before issuing a certificate of authority.

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

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

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

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

(4) the applicant, a principal of the applicant, or a person who controls the applicant does not owe the department a delinquent fee, assessment, administrative penalty, or other 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.

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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.

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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.

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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.

Sec. 712.0038. TRANSFER OR ASSIGNMENT PROHIBITED. A certificate of authority issued under this chapter may not be transferred or assigned.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.

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 would own more than 50 percent of the stock or other ownership or membership interest of the corporation and 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. If the proposed transferee is required to apply for a certificate of authority under this subsection, 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).

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.

Amended by:

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 8, eff. September 1, 2013.

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 contested case under Chapter 2001, Government Code.

(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 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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 8, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 8, eff. September 1, 2011.

Sec. 712.004. PERPETUAL CARE TRUST FUND REQUIRED. (a) Before obtaining a corporate charter, the incorporators of a corporation chartered on or after September 3, 1945, and before September 1, 1993, must establish a fund by permanently depositing in cash with the trustee of the fund:

(1) \$15,000, if the corporation has capital stock of \$15,000;

(2) \$30,000, if the corporation has capital stock of \$30,000; or

(3) \$50,000, if the corporation has capital stock of \$50,000 or more.

(b) Before obtaining a corporate charter, the incorporators of a corporation chartered on or after September 1, 1993, must establish a fund by permanently depositing in cash with the trustee of the fund an amount of not less than \$50,000 for each perpetual care cemetery operated in this state.

(c) The fund shall be permanently set aside and deposited in trust with the trustee in accordance with Subchapter B.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 28, eff. Sept. 1, 1993.

Sec. 712.005. CANCELLATION OF CHARTER FOR FAILURE TO BEGIN OPERATION OF PERPETUAL CARE CEMETERY. (a) If a corporation chartered under Section 712.003 does not begin actual operation of its perpetual care cemetery for six months after the charter is granted and delivered, the commissioner may instruct the secretary of state to cancel the charter and serve notice of the cancellation on the corporation by registered or certified letter, addressed to the corporation's address.

(b) The commissioner may rescind the order of cancellation on:

(1) the application of the directors;

(2) the payment to the commissioner of a penalty set by the commissioner in an amount not to exceed \$500;

(3) the execution and delivery to the commissioner of an agreement to begin actual operation of the perpetual care cemetery not later than one month after the date of the agreement; and

(4) a proper showing by the trustee that the fund is on deposit.

(c) If the corporation does not begin actual operation as agreed, the commissioner by order may set aside the order of rescission and the cancellation is final. The commissioner shall make a full report of the cancellation to the attorney general for liquidation of the corporation, if liquidation is necessary.

(d) If no sale of the dedicated cemetery property of the corporation is made, a certified copy of the order of cancellation authorizes the trustee to refund the fund to the incorporators who signed the corporation's articles of incorporation.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 29, eff. Sept. 1, 1993.

Sec. 712.007. NOTICE OF PERPETUAL CARE REQUIRED. (a) A corporation shall post a sign at or near a cemetery entrance or administration building and readily accessible to the public.

(b) The sign must contain the following:

(1) "Perpetual Care Cemetery," or "Endowment Care

Cemetery";

(2) the names and telephone numbers of two of the corporation's officers or directors; and

(3) the name of each bank or trust company entrusted with the fund.

(c) A corporation must include the following statement in each sales contract, certificate of ownership, or other instrument of conveyance of the exclusive right of sepulture:

"This cemetery is operated as a perpetual care cemetery, which means that a perpetual care fund for its maintenance has been established in conformity with the laws of the State of Texas. Perpetual care means to maintain, repair, and care for the cemetery, including the roads on cemetery property."

(d) The term "endowment care" may be substituted for the term "perpetual care" in the statement required by Subsection (c). Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 30, eff. March 1, 1994.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 341 (H.B. [1031](#)), Sec. 1, eff. September 1, 2009.

Sec. 712.008. RULES. (a) The Finance Commission of Texas may adopt rules to enforce and administer this chapter, including rules establishing fees to defray the costs of enforcing and administering this chapter.

(b) The Finance Commission of Texas shall adopt rules establishing reasonable standards for:

(1) timely placement of burial markers or monuments in a perpetual care cemetery; and

(2) timely response to consumer complaints made to a corporation that operates a perpetual care cemetery.

Added by Acts 2001, 77th Leg., ch. 699, Sec. 13, eff. Sept. 1, 2001. Amended by Acts 2003, 78th Leg., ch. 562, Sec. 37, eff. Sept. 1, 2003.

Sec. 712.009. LIMITATIONS ON BURIALS; DAMAGES. (a) The

Finance Commission of Texas shall adopt rules to administer and enforce this section.

(b) An individual, corporation, partnership, firm, trust, or association that operates or owns a perpetual care cemetery may not inter the remains of an individual who may have caused the death of another person if:

(1) the victim is interred in that cemetery; and

(2) the person having the right to control the disposition of the victim's remains under Section 711.002(a) gives written notice to the cemetery requesting that the individual not be interred in that cemetery if:

(A) the individual was convicted under Section 19.02, 19.03, 19.05, or 49.08, Penal Code, for causing the death of the victim, or convicted under a similar statute of another state; or

(B) the individual was identified as causing the death of the victim, in violation of a provision described by Paragraph (A), by the medical examiner or law enforcement agency having jurisdiction over the offense, and the individual dies before being convicted of the offense.

(c) An individual, corporation, partnership, firm, trust, or association that violates Subsection (b) is liable to the person having the right to control the disposition of the victim's remains under Section 711.002(a) for:

(1) any actual damages incurred;

(2) punitive damages not to exceed \$10,000; and

(3) reasonable attorney's fees and court costs incurred in an effort to enforce compliance with Subsection (b).

(d) Damages under Subsection (c) may not be assessed if the individual, corporation, partnership, firm, trust, or association that operates the cemetery proves by a preponderance of the evidence that:

(1) the cemetery is the only cemetery serving the municipality or county in which the victim and individual causing the victim's death lived; and

(2) the bodies of the victim and individual causing the victim's death were placed as far apart as possible in, or in

different parts of, the cemetery.

(e) An individual, corporation, partnership, firm, trust, or association operating or owning a perpetual care cemetery and barred from interring remains of an individual under this section may not be held liable for damages by a person having the right to control the disposition of the individual's remains under Section 711.002(a), including damages for failure to provide for interment under a contract executed before the delivery of the written notice under Subsection (b)(2).

(f) A notice under Subsection (b)(2) expires seven years after the date the notice is delivered. A new notice may be delivered on the expiration of each previous notice.

Added by Acts 2001, 77th Leg., ch. 699, Sec. 14, eff. Sept. 1, 2001.

#### SUBCHAPTER B. PERPETUAL CARE TRUST FUND

Sec. 712.021. ESTABLISHMENT AND PURPOSES OF FUND. (a) A corporation that operates a perpetual care cemetery in this state shall have a fund established with a trust company or a bank with trust powers that is located in this state. The trust company or bank may not have more than one director who is also a director of the corporation.

(b) 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.

(c) In establishing a fund, the corporation may adopt plans for the general care, maintenance, and embellishment of its perpetual care cemetery.

(d) The fund and the trustee are governed by the Texas Trust Code (Section 111.001 et seq., Property Code).

(e) A corporation that establishes a fund may receive and hold for the fund and as a part of the fund or as an incident to the fund any property contributed to the fund.

(f) The fund and contributions to the fund are for charitable purposes. The perpetual care financed by the fund is:

(1) the discharge of a duty due from the corporation to

persons interred and to be interred in its perpetual care cemetery; and

(2) for the benefit and protection of the public by preserving and keeping the perpetual care cemetery from becoming a place of disorder, reproach, and desolation in the community in which the perpetual care cemetery is located.

(g) The trustors of two or more perpetual care trust funds may establish a common trust fund in which deposits required by this chapter are made, provided that separate records of principal and income are maintained for each perpetual care cemetery for the benefit of which the common trust fund is established, and further provided that the income attributable to each perpetual care cemetery is used only for the perpetual care of that cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 31, eff. Sept. 1, 1993.

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; and

(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.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 32, eff. Sept. 1, 1993.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. [2495](#)), Sec. 9, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. [1167](#)), Sec. 9, eff. September 1, 2011.

Sec. 712.023. VALIDITY OF CONTRIBUTIONS. A contribution to

a fund for perpetual care is not invalid because of:

(1) indefiniteness or uncertainty of the person designated as beneficiary in the instrument establishing the fund;  
or

(2) a violation of the law against perpetuities or the law against the suspension of the power of alienation of title to or use of property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 33, eff. Sept. 1, 1993.

Sec. 712.024. AMENDMENT OF TRUST INSTRUMENT. A corporation and the trustee of a fund may, by agreement, amend the instrument that established the fund to include any provision that is consistent with this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 34, eff. Sept. 1, 1993.

Sec. 712.025. USE OF FUND INCOME. Fund income may be used only to provide the perpetual care described by the instrument that established the fund, including the general care and maintenance of the property entitled to perpetual care in the perpetual care cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 35, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 562, Sec. 38, eff. Sept. 1, 2003.

Sec. 712.026. SUIT BY PLOT OWNERS TO MAINTAIN PERPETUAL CARE. (a) If the directors of a corporation do not generally care for and maintain the corporation's perpetual care cemetery, the district court of the county in which the perpetual care cemetery is located may:

(1) by injunction compel the directors to expend the net income of the corporation's fund as required by this chapter;  
or

(2) appoint a receiver to take charge of the fund and expend the net income of the fund as required by this chapter.

(b) The suit for relief under this section must be brought

by at least five owners of plots located in the perpetual care cemetery.

(c) In a suit for relief under this section, court costs and attorney's fees shall be awarded:

(1) to the directors of the corporation, if it is found that the directors are substantially expending the available net income of the fund as required by this subchapter; or

(2) to the plot owners initiating the suit, if it is found that the directors are not substantially expending the available net income of the fund as required by this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 36, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 106, Sec. 1, eff. Sept. 1, 2001.

Sec. 712.027. INVESTMENT OF FUND. (a) A trustee shall invest and manage the investment of the principal of a fund in accordance with the Texas Trust Code (Section 111.001 et seq., Property Code).

(b) An investment must be made at not more than the prevailing market value of the securities at the time of acquisition.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 37, eff. Sept. 1, 1993.

Sec. 712.028. AMOUNT OF FUND DEPOSITS FROM SALES. (a) A corporation shall deposit in its fund an amount that is at least:

(1) the greater of:

(A) \$1.75 a square foot of ground area conveyed as perpetual care property; or

(B) 15 percent of the total purchase price of that ground area;

(2) the greater of:

(A) \$105 for each crypt interment right for mausoleum interment or lawn crypt interment conveyed as perpetual care property, or \$60 for each crypt interment right if that crypt is accessible only through another crypt; or

(B) seven percent of the total purchase price of

that crypt interment right; and

(3) the greater of:

(A) \$35 for each niche interment right for columbarium interment conveyed; or

(B) 15 percent of the total purchase price of that niche interment right.

(b) Subsection (a) does not apply to deposits from sales required to be made by a corporation in its fund before September 1, 1993, under a corresponding statute in effect before that date.

(c) If a plot owner exchanges a plot for another plot in a corporation's perpetual care cemetery, the amount to be deposited in the corporation's fund in respect of the plot received by the plot owner in the exchange may be reduced by the amount deposited in the fund in respect of the plot contributed by the plot owner in the exchange. The amount required to be deposited with respect to an exchanged plot is the amount required at the time the plot owner originally contracted to purchase the plot.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 219, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 38, eff. Sept. 1, 1993; Acts 2003, 78th Leg., ch. 562, Sec. 39, eff. Sept. 1, 2003.

Sec. 712.029. ACCOUNTING FOR AND DEPOSITING AMOUNTS. (a) The part of the purchase price of a plot in a perpetual care cemetery that is to be deposited in a fund must be shown separately on the original purchase agreement from the total purchase price. A copy of the agreement shall be delivered to the purchaser of the plot.

(b) On the sale of a plot, a commission may not be paid to a broker or salesman on the amount to be deposited in the fund.

(c) A corporation shall deposit in its fund the amount required under Section 712.028 not later than the 20th day after the end of the month in which the original purchase agreement has been paid in full. A corporation may prepay funds into its fund at any time and, if a surplus exists in the fund from the prepayments, may credit against the surplus the amounts otherwise required to be deposited in the fund under Section 712.028 until the surplus has

been depleted. In determining whether a surplus exists from prepayments, no part of the fund resulting from gifts to the fund under Section 712.030 may be considered.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 220, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 39, eff. Sept. 1, 1993.

Sec. 712.030. USE OF GIFT FOR SPECIAL CARE OF PLOT IN PERPETUAL CARE CEMETERY. A trustee may take and hold property transferred to the trustee in trust in order to apply the principal, proceeds, or income of the property for any purpose consistent with the purpose of a corporation's perpetual care cemetery, including:

(1) the improvement or embellishment of any part of the perpetual care cemetery;

(2) the erection, renewal, repair, or preservation of a monument, fence, building, or other structure in the perpetual care cemetery;

(3) planting or cultivating plants in or around the perpetual care cemetery; or

(4) taking special care of or embellishing a plot, section, or building in the perpetual care cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 40, eff. Sept. 1, 1993.

#### SUBCHAPTER C. REGULATION AND ENFORCEMENT

Sec. 712.041. ANNUAL STATEMENT OF FUNDS. (a) A corporation shall file in its office and with the commissioner a statement for each perpetual care cemetery operated in this state in duplicate that shows:

(1) the principal amount of its fund;

(2) the amount of the fund invested in bonds and other securities;

(3) the amount of cash on hand in the fund;

(4) any other item that shows the financial condition of the fund;

(5) the number of crypts, niches, and square feet of

ground area conveyed under perpetual care before and after March 15, 1934, listed separately; and

(6) the number of crypts, niches, and square feet of ground area conveyed under perpetual care after March 15, 1934, for which the minimum deposits required for perpetual care have not been paid to the fund.

(b) The corporation's president and secretary, or two principal officers, shall verify the information on the statement.

(c) The corporation shall revise and post and file the statement on or before March 1 of each year.

(d) A copy of the statement shall be available to the public upon request.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 41, eff. Sept. 1, 1993.

Sec. 712.042. FEES. On filing a statement of funds under Section 712.041, a corporation shall pay the commissioner a reasonable and necessary fee set by rule adopted by the Finance Commission of Texas under Section 712.008 to defray the cost of administering this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 221, eff. Sept. 1, 1991; Acts 1993, 73rd Leg., ch. 634, Sec. 42, eff. Sept. 1, 1993; Acts 1995, 74th Leg., ch. 914, Sec. 6, eff. Sept. 1, 1995; Acts 1999, 76th Leg., ch. 62, Sec. 7.65, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 699, Sec. 15, eff. Sept. 1, 2001.

Sec. 712.043. ADDITIONAL FUND REPORT. The commissioner may require, as often as the commissioner determines necessary, the trustee of a corporation's fund to make under oath a detailed report of the condition of the fund. The report must include:

- (1) a detailed description of the assets of the fund;
- (2) a description of securities held by the fund;
- (3) if a security held by the fund is a lien, a description of the property against which the lien is taken;
- (4) each security's acquisition cost;
- (5) each security's market value at the time of

acquisition;

- (6) each security's current market value;
- (7) each security's status with reference to default;
- (8) a statement that a security is not encumbered by

debt; and

- (9) any other information the commissioner determines is pertinent.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 43, eff. Sept. 1, 1993.

Sec. 712.044. EXAMINATION OF RECORDS; EXAMINATION FEES AND EXPENSES. (a) The commissioner may examine on a periodic basis 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 board of directors, cemetery dedication statements and plat maps, and mausoleum and lawn crypt construction contracts and specifications.

(b) A corporation that is examined under this section shall make the specified books and records available for examination by the banking department upon reasonable notice to the corporation and shall pay to the commissioner for the examination a reasonable and necessary fee set by rules adopted by the Finance Commission of

Texas under Section 712.008 to defray:

- (1) the cost of examination;
- (2) the equitable or proportionate cost of maintenance and operation of the department; and
- (3) the cost of administering and enforcing this chapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 44, eff. Sept. 1, 1993; Acts 2001, 77th Leg., ch. 699, Sec. 16, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 345 (S.B. [1173](#)), Sec. 2, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1290 (H.B. [2581](#)), Sec. 2, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. [2495](#)), Sec. 10, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. [1167](#)), Sec. 10, eff. September 1, 2011.

Sec. 712.0441. ENFORCEMENT. (a) After notice and opportunity for hearing, the commissioner may impose an administrative penalty on a person who:

- (1) violates this chapter or a final order of the commissioner or rule of the Finance Commission of Texas and does not correct the violation before the 31st day after the date the person receives written notice of the violation from the banking department; or

- (2) engages in a pattern of violations, as determined by the commissioner.

(b) The amount of the penalty for each violation may not exceed \$1,000 for each day the violation occurs.

(c) In determining the amount of the penalty, the commissioner shall consider the seriousness of the violation, the person's history of violations, and the person's good faith in attempting to comply with this chapter. The imposition of a penalty under this section is subject to judicial review as a contested case under Chapter 2001, Government Code. The commissioner may collect

the penalty in the same manner that a money judgment is enforced in district court.

(d) In addition to any penalty that may be imposed under Subsection (a), the commissioner may bring a civil action against a corporation to enjoin a violation described in Subsection (a) that has not been corrected within 30 days after the receipt by the corporation of written notice from the commissioner of the violation. Any such civil action may be brought in the district court of the county in which the corporation's perpetual care cemetery is operated.

(e) Repealed by Acts 2011, 82nd Leg., R.S., Ch. 1336, Sec. 15, eff. September 1, 2011.

(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.

(g) If a violation described in Subsection (a) has not been corrected before the 31st day after the date the corporation receives written notice from the commissioner of the violation, the commissioner may report the violation to the attorney general, who shall bring suit or quo warranto proceedings for the forfeiture of the corporation's charter and dissolution of the corporation in a district court of Travis County or of any county in which the corporation's perpetual care cemetery is operated.

(h) If a fund is misappropriated by its trustee or is not otherwise handled as required by this chapter, the commissioner may

take action against the trustee as provided in Chapter 185, Finance Code.

Added by Acts 1993, 73rd Leg., ch. 634, Sec. 45, eff. Sept. 1, 1993.

Amended by Acts 1997, 75th Leg., ch. 769, Sec. 3, eff. Sept. 1, 1997; Acts 1999, 76th Leg., ch. 62, Sec. 7.66, eff. Sept. 1, 1999; Acts 2001, 77th Leg., ch. 699, Sec. 17, eff. Sept. 1, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 3, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 3, eff. September 1, 2005.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 11, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 15, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 11, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 15, eff. September 1, 2011.

Acts 2013, 83rd Leg., R.S., Ch. 123 (S.B. 661), Sec. 9, eff. September 1, 2013.

Sec. 712.0442. PATTERN OF WILFUL DISREGARD. (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 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 under this chapter if the person holds such a certificate.

(b) For the purposes of this section, violations corrected as provided by Section 712.0441 may be included in determining whether a pattern of wilful disregard for the requirements of this chapter or rules of the finance commission exists.

Added by Acts 2001, 77th Leg., ch. 699, Sec. 18, eff. Sept. 1, 2001.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 12, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 12, eff. September 1, 2011.

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 date the order is mailed or delivered. If the person requests a hearing, the hearing shall be conducted in accordance with the procedures for a contested case hearing under Chapter 2001, Government Code.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 13, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 13, eff. September 1, 2011.

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.

Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 13, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 13, eff. September 1, 2011.

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. Added by Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. [2495](#)), Sec. 13, eff. September 1, 2011.

Added by Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. [1167](#)), Sec. 13, eff. September 1, 2011.

Sec. 712.048. CRIMINAL PENALTIES. (a) A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person sells, offers to sell, or advertises for sale an interment right in a plot and, before a fund is established for the cemetery in which the plot is located as provided by this chapter, represents that the plot is under perpetual care. An offense under this subsection is a Class A misdemeanor. This subsection does not prevent an aggrieved party or the attorney general from maintaining a civil action for the recovery of damages caused by an injury resulting from an offense under this subsection.

(b) A person who is an individual, firm, association, corporation, or municipality, or an officer, agent, or employee of an individual, firm, association, corporation, or municipality, commits an offense if the person knowingly defalcates or misappropriates assets of a fund. An offense under this subsection is punishable as if it were an offense under Section 32.45, Penal Code.

(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 injury resulting from an offense under this subsection.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended

by Acts 1993, 73rd Leg., ch. 634, Sec. 46, eff. Sept. 1, 1993.

Amended by:

Acts 2011, 82nd Leg., R.S., Ch. 532 (H.B. 2495), Sec. 14, eff. September 1, 2011.

Acts 2011, 82nd Leg., R.S., Ch. 1336 (S.B. 1167), Sec. 14, eff. September 1, 2011.

#### SUBCHAPTER D. SALE OF UNDEVELOPED MAUSOLEUM SPACE

Sec. 712.061. OFFER AND SALE OF UNDEVELOPED MAUSOLEUM SPACE. (a) A corporation may not directly or indirectly sell or offer for sale an undeveloped mausoleum space unless before the sale or offer the corporation:

(1) establishes a preconstruction trust as provided by Section 712.063 or executes and submits a performance bond payable to the commissioner as provided by Section 712.067; and

(2) submits a written notice to the commissioner as required by Subsection (b).

(b) The written notice to the commissioner must set forth:

(1) the date the corporation anticipates that sales of undeveloped mausoleum spaces will begin;

(2) a copy of the sales contract proposed for use that complies with Section 712.066;

(3) if the corporation establishes a preconstruction trust as provided by Section 712.063, a copy of the executed preconstruction trust agreement that complies with this subchapter and identifies the preconstruction trustee;

(4) if the corporation submits a performance bond payable to the commissioner as provided by Section 712.067, the executed, original performance bond in the amount required by Section 712.067 and documentation supporting the corporation's computation of that amount; and

(5) other information the commissioner reasonably requires to properly administer and enforce this subchapter.

(c) At any time before beginning construction of the mausoleum or mausoleum section in which undeveloped mausoleum spaces are being sold, a corporation that has established a

preconstruction trust may substitute a performance bond that meets the requirements of Section 712.067. On acceptance of the performance bond by the commissioner, the corporation may terminate and withdraw all proceeds deposited in the preconstruction trust.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 4, eff. September 1, 2005.

Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 4, eff. September 1, 2005.

Sec. 712.062. DEPOSITS TO FUND. This subchapter does not affect the corporation's obligation to make deposits to its fund as provided in Subchapter B.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 4, eff. September 1, 2005.

Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 4, eff. September 1, 2005.

Sec. 712.063. PRECONSTRUCTION TRUST. (a) Except as provided by Section 712.067, a corporation that intends to directly or indirectly sell or offer for sale undeveloped mausoleum spaces shall establish a preconstruction trust by written declaration and agreement appointing as preconstruction trustee a financial institution with trust powers that is located in this state.

(b) The corporation shall deposit in the preconstruction trust an amount equal to at least 40 percent of all proceeds received directly or indirectly from the sale of undeveloped mausoleum spaces, not including interest, finance charges, sales taxes, credit life insurance premiums, or deposits to the corporation's fund required by Section 712.029(c).

(c) On application, the commissioner may authorize a corporation to deposit less than the amount required by Subsection (b) if the corporation demonstrates to the reasonable satisfaction of the commissioner that:

(1) the sales projections of the corporation are prudent and based on reasonable assumptions;

(2) the projected cost of construction is objectively determined based on documentation similar to that required by

Section 712.067(b); and

(3) the amount of money projected to be deposited in the preconstruction trust under the proposed lesser amount will equal or exceed 120 percent of the cost of constructing the mausoleum or mausoleum section.

(d) The corporation shall deposit the required amount into the preconstruction trust on or before the 30th day after the end of the month in which payment is received. At the time of making a deposit, the corporation shall furnish to the preconstruction trustee the name of each payor and the amount of payment on each account for which the deposit is being made. A contract between the corporation and an agent or third party developer may not restrict or waive the corporation's primary liability for making the deposits required by this section.

(e) The preconstruction trustee may commingle deposits received if the accounting records accurately establish a separate account for each contract and reflect the amounts deposited and the income and loss allocable to each contract.

(f) Money in a preconstruction trust may be invested only in:

(1) demand deposits, savings accounts, certificates of deposit, or other accounts in financial institutions if the amounts deposited in those accounts are fully covered by federal deposit insurance or otherwise fully secured by a separate fund of securities in the manner provided by Section 184.301, Finance Code;

(2) marketable notes, bonds, evidences of indebtedness, or obligations with a term to maturity of five years or less and:

(A) issued by the United States or an instrumentality of the United States; or

(B) the principal and interest of which are guaranteed by the full faith and credit of the United States; and

(3) a mutual fund the portfolio of which consists wholly of investments permitted by Subdivisions (1) and (2).

(g) The preconstruction trustee may withdraw money from earnings on a preconstruction trust for the purpose of paying reasonable and necessary costs of operation of the preconstruction

trust, including trustee or depository fees and expenses, and any special examination fees due to the department related to an examination of the preconstruction trust that is not incidental to examination of the corporation's fund. With the department's prior approval, the corporation may withdraw money from earnings on a preconstruction trust to pay any tax incurred because of the existence of the preconstruction trust.

(h) The preconstruction trust and the preconstruction trustee are governed by Subtitle B, Title 9, Property Code.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 4, eff. September 1, 2005.

Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 4, eff. September 1, 2005.

Sec. 712.064. CONSTRUCTION; DEFAULT. (a) The corporation shall start construction of the mausoleum or mausoleum section in which sales or reservations for sale of undeveloped mausoleum spaces are being made on or before a date that is 48 months after the date of the first of those sales or reservations and shall complete construction on or before a date that is 60 months after the date of the first of those sales or reservations. The commissioner may grant extensions for good cause shown.

(b) If construction of a mausoleum or mausoleum section related to an undeveloped mausoleum space has not begun or been completely constructed by the applicable time specified by Subsection (a), on the written request of the buyer, the corporation and the preconstruction trustee shall, on or before the 30th day after the date of the buyer's request, refund the entire amount paid for the undeveloped mausoleum space plus, if the corporation established a preconstruction trust, net income earned on that portion of the money deposited in the preconstruction trust. The corporation is liable to a buyer for any portion of the purchase price paid for undeveloped mausoleum spaces that was not deposited in the preconstruction trust.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. 1173), Sec. 4, eff. September 1, 2005.

Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. 2581), Sec. 4, eff.

September 1, 2005.

Sec. 712.065. RELEASE OF TRUST FUNDS TO CORPORATION. (a) On completion of construction of a mausoleum or mausoleum section subject to this subchapter, the corporation may withdraw all money deposited in the preconstruction trust and the net income earned on the money after submitting to the preconstruction trustee a sworn affidavit of completion executed by an officer or agent of the corporation on a form prescribed by the department.

(b) During construction of the mausoleum or mausoleum section containing the undeveloped mausoleum spaces, the corporation may periodically withdraw from the preconstruction trust an amount equal to the previously unreimbursed cost of performed labor or delivered materials after submitting to the preconstruction trustee a sworn affidavit of expenditures for construction cost executed by an officer or agent of the corporation on a form prescribed by the department.

(c) If the corporation delivers a completed mausoleum space acceptable to the buyer in lieu of the undeveloped mausoleum space purchased, the corporation may withdraw all money deposited to the preconstruction trust for that buyer and related income earned on the money after submitting to the preconstruction trustee a sworn affidavit of performance executed by an officer or agent of the corporation on a form prescribed by the department.

(d) The corporation shall maintain copies of the affidavits required by this section for examination by the department.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. [1173](#)), Sec. 4, eff. September 1, 2005.

Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. [2581](#)), Sec. 4, eff. September 1, 2005.

Sec. 712.066. CONTRACT DISCLOSURES. (a) A sales contract for an undeveloped mausoleum space, whether in English or Spanish, must inform the buyer:

(1) that the buyer by written notice may cancel the contract for the failure of the corporation or its agent or contractor to construct the mausoleum or mausoleum section

containing the undeveloped mausoleum space within the time limits specified by Section 712.064(a) and receive a refund of the entire amount paid under the contract for the undeveloped mausoleum space plus, if the corporation established a preconstruction trust, net income earned on that portion of the money deposited in the preconstruction trust, as provided by Section 712.064(b);

(2) of the options available under a fully paid contract in the event that the person to be interred in the undeveloped mausoleum space dies before completion of the related mausoleum or mausoleum section, which may include an option to:

(A) select a replacement mausoleum space or other interment that is acceptable to the buyer or buyer's representative; or

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

(3) if the corporation does not offer a temporary interment option and the buyer does not accept a replacement mausoleum space or other interment, that the buyer or the buyer's representative by written notice may cancel the contract and receive a refund of the entire amount paid under the contract for the undeveloped mausoleum space plus, if the corporation established a preconstruction trust, net income earned on that portion of the money deposited in the preconstruction trust, as provided by Section 712.064(b).

(b) A corporation's sales contract for undeveloped mausoleum 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) Required notices to buyers must be written in plain language designed to be easily understood by the average consumer and be printed in an easily readable font and type size.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. [1173](#)), Sec. 4, eff. September 1, 2005.

Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. [2581](#)), Sec. 4, eff.

September 1, 2005.

Sec. 712.067. BOND IN LIEU OF PRECONSTRUCTION TRUST. (a) In lieu of establishing the preconstruction trust required by Section 712.063, a corporation may execute and submit a bond issued by a surety company authorized to do business in this state and reasonably acceptable to the commissioner. The bond must be payable to the commissioner and conditioned on the faithful performance of the contracts for sale of undeveloped mausoleum spaces.

(b) The amount of the bond must equal or exceed 120 percent of the cost of construction of the related mausoleum or mausoleum section. The cost of construction of the mausoleum or mausoleum section must be based on:

(1) estimates of the design architect and two or more bids for the construction from qualified contractors authorized to do business in this state;

(2) the actual cost of construction set forth in an executed contract with a qualified contractor authorized to do business in this state; or

(3) if the corporation intends to construct the mausoleum or mausoleum section itself, an amount equal to 120 percent of the estimated cost of construction, including direct and allocated labor and material costs.

(c) At any time before beginning construction of the mausoleum or mausoleum section in which undeveloped mausoleum spaces are being sold, a corporation that has submitted a performance bond may establish a preconstruction trust that meets the requirements of Section 712.063. On acceptance of the substituted preconstruction trust by the commissioner, the corporation may terminate and withdraw the previously submitted performance bond.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. [1173](#)), Sec. 4, eff. September 1, 2005.

Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. [2581](#)), Sec. 4, eff. September 1, 2005.

Sec. 712.068. REPORTS. On or before the date the corporation's annual statement of funds is due as required by Section 712.041, the corporation shall cause the preconstruction trustee to file with the department, in the form prescribed by the department, a full and true statement regarding the activities of any preconstruction trust that was subject to this subchapter at any time during the preceding calendar year.

Added by Acts 2005, 79th Leg., Ch. 345 (S.B. [1173](#)), Sec. 4, eff. September 1, 2005.

Added by Acts 2005, 79th Leg., Ch. 1290 (H.B. [2581](#)), Sec. 4, eff. September 1, 2005.

HEALTH AND SAFETY CODE

TITLE 8. DEATH AND DISPOSITION OF THE BODY

SUBTITLE C. CEMETERIES AND CREMATORIES

CHAPTER 713. LOCAL REGULATION OF CEMETERIES

SUBCHAPTER A. MUNICIPAL REGULATION OF CEMETERIES

Sec. 713.001. MUNICIPAL CEMETERY AUTHORIZED. The governing body of a municipality may:

- (1) purchase, establish, and regulate a cemetery; and
- (2) enclose and improve a cemetery owned by the municipality.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1993, 73rd Leg., ch. 634, Sec. 47, eff. Sept. 1, 1993.

Sec. 713.002. LOCAL TRUST FOR CEMETERY. (a) A municipality that owns or operates a cemetery or has control of cemetery property may act as a permanent trustee for the perpetual maintenance of the lots and graves in the cemetery.

(b) To act as a trustee, a majority of the municipality's governing body must adopt an ordinance or resolution stating the municipality's willingness and intention to act as a trustee. When the ordinance or resolution is adopted and the trust is accepted, the trust is perpetual.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.003. LOCAL AUTHORITY TO RECEIVE GIFTS; DEPOSITS FOR CARE; CERTIFICATES. (a) A municipality that is a trustee for the perpetual maintenance of a cemetery may adopt reasonable rules to receive a gift or grant from any source and to determine the amount necessary for permanent maintenance of a grave or burial lot, including a family lot.

(b) A municipality that is a trustee for any person shall accept the amount the municipality requires for permanent maintenance of a grave or burial lot on behalf of that person or a decedent.

(c) The municipality's acceptance of the deposit is a

perpetual trust for the designated grave or burial lot.

(d) On acceptance of the deposit, the municipality's secretary, clerk, or mayor shall issue a certificate in the name of the municipality to the trustee or depositor. The certificate must state:

- (1) the depositor's name;
- (2) the amount and purpose of the deposit;
- (3) the location, as specifically as possible, of the grave, lot, or burial place to be maintained; and
- (4) other information required by the municipality.

(e) An individual, association, foundation, or corporation that is interested in the maintenance of a neglected cemetery in a municipality's possession and control may donate funds to the perpetual trust fund to beautify and maintain the entire cemetery or burial grounds generally.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.004. USE OF FUNDS. (a) A municipality may invest and reinvest deposits under this subchapter in interest-bearing bonds or governmental securities.

(b) The principal of the funds must be kept intact as a principal trust fund, and the fund's trustee may not use those funds.

(c) The income or revenue of the fund must be used for the maintenance and care in a first-class condition of the grave, lot, or burial place for which the funds are donated. Income or revenue that is more than the amount necessary to faithfully accomplish the trust may be used, in the discretion of the trustee, to beautify the entire cemetery or burial grounds generally.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.005. DEPOSIT RECORDS. (a) A municipality that acts as a trustee under this subchapter shall maintain a permanent, well-bound record book including, for each deposit made:

- (1) the name of the depositor, listed in alphabetical order;
- (2) the purpose and amount of the deposit;

(3) the name and location, as specifically as possible, of the grave, lot, or burial place to be maintained;

(4) the condition and status of the trust imposed; and

(5) other information required by the municipality.

(b) A certificate holder under this subchapter may, on payment of the proper cost or recording fee, record the certificate in the deed records of the county in which the cemetery is located. The county clerk shall file, index, and record the certificate in the deed records of that county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.006. TAX. (a) A municipality acting as a trustee for a cemetery may include in the municipality's annual budget an amount considered necessary for cemetery maintenance.

(b) The municipality may impose a tax on all property in the municipality in an amount not exceeding five cents for each \$100 valuation of the property for maintenance of the cemetery, regardless of whether the cemetery is located inside or outside the municipal limits.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.007. APPOINTMENT OF SUCCESSOR TRUSTEE. The district judge of the county in which the cemetery is located shall appoint a suitable successor or trustee to faithfully execute a trust in accordance with this subchapter if the municipality renounces a trust assumed under this subchapter or fails to act as its trustee and:

(1) the occasion demands the appointment; or

(2) a vacancy occurs.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.008. TERMINATION OF MUNICIPAL TRUST BY CERTAIN MUNICIPALITIES. The governing body of a municipality in a county with a population of at least 128,000 but not more than 300,000 may abolish the municipality's perpetual trust fund for a cemetery and use the fund, including both principal and interest, for permanent improvements to the cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 14, Sec. 222, eff. Sept. 1, 1991; Acts 1991, 72nd Leg., ch. 597, Sec. 78, eff. Sept. 1, 1991; Acts 2001, 77th Leg., ch. 669, Sec. 40, eff. Sept. 1, 2001.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 136 (S.B. [1103](#)), Sec. 1, eff. May 23, 2009.

Sec. 713.009. LOCAL POSSESSION AND CONTROL OF UNKEPT OR ABANDONED CEMETERY. (a) Except as provided by Subsection (i), a municipality with a cemetery inside the municipality's boundaries or extraterritorial jurisdiction may, by resolution, take possession and control of the cemetery on behalf of the public if the cemetery threatens or endangers public health, safety, comfort, or welfare.

(b) If a municipality does not take possession and control of a cemetery under Subsection (a) or acts to take possession and control but does not perform the work required by Subsections (d), (e), and (f), a district court on petition of a resident of the county in which the cemetery is located shall by order appoint a willing nonprofit corporation organized under the Texas Non-Profit Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil Statutes) to act in place of the municipality to protect the public health, safety, comfort, and welfare. The district court and the nonprofit corporation must comply with the requirements of Chapter 715 in assuming responsibility for the cemetery.

(c) In accordance with Chapter 715, a district court appointing a nonprofit corporation has continuing jurisdiction to monitor and review the corporation's operation of the cemetery. The court may, on its own motion, revoke the appointment and appoint another willing nonprofit corporation without the necessity of another petition. The court shall review the subsequent appointment if a county resident petitions for review of the appointment.

(d) A resolution of the municipality or an order of the court under this section must specify that, not later than the 60th day after the date of giving notice of a declaration of intent to

take possession and control, the municipality or corporation, as appropriate, shall present a plan to:

(1) remove or repair any fences, walls, or other improvements;

(2) straighten and reset any memorial stones or embellishments that are a threat or danger to public health, safety, comfort, or welfare; and

(3) take proper steps to restore and maintain the premises in an orderly and decent condition.

(e) The notice must be given by mail to all persons shown by the records in the county clerk's office to have an interest in the cemetery, to the Texas Historical Commission, and to all interested persons by publication in a newspaper of general circulation in the municipality.

(f) After taking the action described by Subsection (d), the municipality or corporation shall continue to maintain the cemetery so that it does not endanger the public health, safety, comfort, or welfare. Additional burial spaces may not be offered for sale.

(g) A cemetery in the possession and control of a municipality or corporation under this section must remain open to the public.

(h) A municipality or an officer or employee of the municipality is not civilly or criminally liable for acts performed in the good faith administration of this section.

(i) This section does not apply to:

(1) a perpetual care cemetery incorporated under the laws of this state; or

(2) a private family cemetery.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. [2927](#)), Sec. 12, eff. September 1, 2009.

Sec. 713.010. PRIVATE CARE OF GRAVES. This subchapter does not affect the right of a person who has an interest in a grave or burial lot, or who is related within the fifth degree by affinity or consanguinity, as determined under Chapter 573, Government Code,

to, or is a direct descendant of, a decedent interred in the cemetery, to beautify or maintain a grave or burial lot individually or at the person's own expense in accordance with reasonable municipal rules.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 561, Sec. 33, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. [2927](#)), Sec. 13, eff. September 1, 2009.

Sec. 713.011. MAINTENANCE OF MUNICIPAL CEMETERIES. (a) A municipality that operates or has jurisdiction over a public cemetery shall maintain the cemetery in a condition that does not endanger the public health, safety, comfort, or welfare.

(b) A municipality's responsibility to maintain a cemetery under this section includes:

- (1) repairing and maintaining any fences, walls, buildings, roads, or other improvements;
- (2) leveling or straightening markers or memorials;
- (3) properly maintaining lawns, shrubbery, and other plants;
- (4) removing debris, including dead flowers and deteriorated plastic ornaments; and
- (5) promptly restoring gravesites following an interment.

Added by Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. [2927](#)), Sec. 14, eff. September 1, 2009.

#### SUBCHAPTER B. COUNTY REGULATION OF CEMETERIES

Sec. 713.021. COUNTY TRUST FOR CEMETERY. A commissioners court by resolution may establish a perpetual trust fund to provide maintenance for a neglected or unkept public or private cemetery in the county. The commissioners court shall appoint the county judge as trustee for the fund.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.022. GIFTS FOR MAINTENANCE OF CEMETERY. (a) A trustee for a county perpetual trust fund may adopt reasonable rules to receive a gift or grant from any source and to determine the amount necessary for permanent maintenance of the cemetery.

(b) A person who is interested in the maintenance of a neglected or unkept public or private cemetery in the county may make a gift to the trust fund for maintenance of the cemetery.

(c) The trustee's acceptance of the gift is a perpetual trust for the maintenance of the cemetery.

(d) On acceptance of the gift, the trustee shall instruct the county treasurer to issue a certificate to the donor. The certificate must state:

(1) the amount and purpose of the gift; and

(2) other information determined necessary by the trustee.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.023. USE OF FUNDS. (a) The trustee may invest the fund in interest-bearing bonds or federal, state, or local government securities.

(b) The principal of the fund must be kept intact as a permanent principal trust fund.

(c) The income or revenue of the fund may be used only for maintenance of a neglected or unkept public or private cemetery in the county.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.024. APPOINTMENT OF SUCCESSOR TRUSTEE. If a county judge who is acting as a trustee under this subchapter vacates the office or renounces the trust, the district judge shall appoint a person, other than a county commissioner, as successor trustee to execute the trust.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.025. PRIVATE CARE OF GRAVES. This subchapter does not affect the right of a person to maintain a grave or burial lot in

a cemetery if the person:

(1) has an interest in the grave or burial lot; or

(2) is related within the fifth degree by affinity or consanguinity, as determined under Chapter 573, Government Code, to, or is a direct descendant of, a decedent interred in a cemetery maintained by a trustee under this subchapter.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1991, 72nd Leg., ch. 561, Sec. 34, eff. Aug. 26, 1991; Acts 1995, 74th Leg., ch. 76, Sec. 5.95(27), eff. Sept. 1, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. [2927](#)), Sec. 15, eff. September 1, 2009.

Sec. 713.026. USE OF PUBLIC FUNDS AND PROPERTY PROHIBITED; EXCEPTIONS. (a) Except as provided by Sections 713.027 and 713.028, a trustee of a fund established under this subchapter or a member of the commissioners court or any other elected county officer may not pay or use public funds or county employees, equipment, or property to maintain a neglected or unkept public or private cemetery.

(b) Subsection (a) does not apply to a county if:

(1) the county owned the cemetery from September 1, 1976, through January 1, 1979; or

(2) the county used county funds, employees, equipment, or property to maintain a county-owned cemetery during 1976.

(c) A county described by Subsection (b)(1) or (2) may continue to own the cemetery or to provide maintenance for the cemetery that qualified the county for the exception if the county files with the secretary of state a certified copy of a commissioners court order certifying that the county qualifies to own or maintain a cemetery under this section. The order must be kept in a register entitled "County-Owned and -Operated Cemeteries."

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.027. CEMETERY OWNED BY COUNTY OF 8,200 OR LESS.

(a) A county with a population of 8,200 or less may own, operate, and maintain a cemetery and sell the right of burial in the cemetery.

(b) The sale of the right of burial is exempt from the requirements of Sections 263.001-263.006, Local Government Code.

(c) Revenue received from the sale of the right of burial may be used to purchase additional land for cemetery purposes and for maintenance of county cemetery property.

(d) The commissioners court of the county may spend money in the general fund to maintain a public cemetery in the county and may dedicate not more than one-eighth of the maximum allowable tax levy for that purpose.

(e) The commissioners court of the county serves as the county cemetery board and shall manage cemetery property.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 713.028. COUNTY CARE OF CEMETERY OLDER THAN 50 YEARS.

(a) For purposes of historical preservation or public health, safety, or welfare, a commissioners court may use public funds, county employees, county inmate labor as provided by Article 43.10, Code of Criminal Procedure, and county equipment to maintain a cemetery that has a grave marker more than 50 years old.

(b) This section does not apply to a perpetual care cemetery or a cemetery maintained by a religious or fraternal organization.

(c) At the discretion of the commissioners court, a county may permit the use of public funds, county employees, county inmate labor as provided by Article 43.10, Code of Criminal Procedure, and county equipment to open and close graves in a cemetery described by Subsection (a).

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 2001, 77th Leg., ch. 1168, Sec. 1, eff. June 15, 2001.

Amended by:

Acts 2005, 79th Leg., Ch. 853 (S.B. 951), Sec. 1, eff. September 1, 2005.

Acts 2005, 79th Leg., Ch. 1187 (H.B. 129), Sec. 2, eff. June 18, 2005.

Sec. 713.029. COUNTY AUTHORITY TO PURCHASE BURIAL GROUNDS FOR VETERANS. (a) A commissioners court may purchase burial grounds to be used exclusively for the burial of honorably discharged persons who:

(1) have served in the United States armed forces during a war in which the United States participated; and

(2) die without leaving sufficient means to pay funeral expenses.

(b) A commissioners court may not purchase burial grounds under this section if there is a national military cemetery or other military plot in the county in which honorably discharged veterans of the United States armed forces may be buried free of charge.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

HEALTH AND SAFETY CODE

TITLE 8. DEATH AND DISPOSITION OF THE BODY

SUBTITLE C. CEMETERIES AND CREMATORIES

CHAPTER 714. MISCELLANEOUS PROVISIONS RELATING TO CEMETERIES

Sec. 714.001. DEPTH OF GRAVES; CRIMINAL PENALTY. (a) The body of a decedent may not be buried in a manner so that the outside top surface of the container of the body is:

(1) less than two feet below the surface of the ground if the container is not made of an impermeable material; or

(2) less than 1-1/2 feet below the surface of the ground if the container is made of an impermeable material.

(b) The governing body of a political subdivision of this state may, because of subsurface soil conditions or other relevant considerations, permit, by ordinance or rule, burials in that political subdivision at a shallower depth than that required by Subsection (a).

(c) This section does not apply to burials in a sealed surface reinforced concrete burial vault.

(d) A person commits an offense if the person buries the body of a decedent in violation of this section or in violation of an ordinance or rule adopted under this section.

(e) An offense under this section is a misdemeanor punishable by a fine of not less than \$100 or more than \$200.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 714.002. LIMITATION ON LOCATION OF FEED OR SLAUGHTER PENS NEAR CEMETERY. (a) The maintenance or location of a feed pen for hogs, cattle, or horses, a slaughter pen, or a slaughterhouse 500 feet or nearer to an established cemetery in a county with a population of at least 525,000 is a nuisance.

(b) The cemetery owner or a lot owner may bring suit to abate the nuisance and to prohibit its continuance. If a nuisance under this section exists or is threatened, the court shall grant a permanent injunction against the person responsible for the nuisance.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

Sec. 714.003. ABANDONED PLOTS IN PRIVATE CEMETERIES. (a) The ownership or right of sepulture in an unoccupied plot for which adequate perpetual care has not been provided in a private cemetery operated by a nonprofit organization reverts to the cemetery on a finding by a court that the plot is abandoned. A cemetery may convey title to any plot that has reverted to the cemetery.

(b) A plot is presumed to be abandoned if for 10 consecutive years an owner or an owner's successor in interest does not:

(1) maintain the plot in a condition consistent with other plots in the cemetery; or

(2) pay any assessments for maintenance charged by the cemetery.

(c) An owner or an owner's successors in interest may rebut the presumption of abandonment by:

(1) delivering to the governing body or by filing with the court written notice claiming ownership of or right of sepulture in the plot; and

(2) paying the cemetery for any past due maintenance charges on the plot plus interest at the maximum legal rate.

(d) A notice for rebuttal of a presumption must be given by delivery in person or by prepaid United States mail, properly addressed. If the notice is mailed, delivery is effective on the date the envelope containing the notice is postmarked.

(e) The governing body may petition a court of competent jurisdiction for an order declaring that a plot is abandoned if, not later than the 91st day and not earlier than the 120th day before the date the petition is filed, the governing body gives written notice of its claim of the plot to the owner or, if the owner is deceased or his address is unknown, to the owner's known successors in interest. The notice must be delivered in person or by prepaid United States mail, sent to the last known address of the owner or the owner's successors in interest.

(f) If after reasonable effort the governing body cannot locate or ascertain the identity of an owner or an owner's successors in interest, the governing body must give the notice required by this section by publishing it once each week for four

consecutive weeks in a newspaper of general circulation in the county in which the cemetery is located.

(g) After deducting reasonable expenses related to the reacquisition and sale of an abandoned plot, including restoration, expenses of the sale, court costs and legal fees, a cemetery shall deposit the balance of the funds from the sale of the plot into an account to be used for the care of the cemetery.

(h) This section prevails over Sections 711.035, 711.036, 711.038, 711.039, and 711.040 to the extent of any conflict.

(i) In this section:

(1) "Governing body" means the person in a nonprofit organization responsible for conducting a cemetery business.

(2) "Nonprofit organization" means an organization described by Section 501(c)(13), Internal Revenue Code of 1986 (26 U.S.C. Section 501(c)(13)).

(3) "Plot" means a grave space in a cemetery that has not been used to inter human remains.

(4) "Private cemetery" means a cemetery that is not owned or operated by the United States, this state, or a political subdivision of this state, but is owned and operated by a nonprofit organization.

Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989. Amended by Acts 1999, 76th Leg., ch. 1124, Sec. 1, 2, eff. June 18, 1999.

Sec. 714.004. REMOVAL OF REMAINS FROM ABANDONED CEMETERY IN COUNTY OF AT LEAST 525,000. (a) If an abandoned and neglected cemetery in a county with a population of at least 525,000 for which no perpetual care and endowment fund has been regularly and legally established is abated as a nuisance, the court abating the nuisance and enjoining its continuance or the governing body of the municipality in which the cemetery is located may authorize the removal of all bodies, monuments, tombs, and other similar items from the cemetery to a perpetual care cemetery as defined by Section 711.001.

(b) If there is no perpetual care cemetery in the county that under its rules permits the interment of the bodies of the persons that are to be removed, the bodies, monuments, tombs, and

other similar items may be removed to a nonperpetual care cemetery that has provided for assessments for the cemetery's future care. Acts 1989, 71st Leg., ch. 678, Sec. 1, eff. Sept. 1, 1989.

HEALTH AND SAFETY CODE

TITLE 8. DEATH AND DISPOSITION OF THE BODY

SUBTITLE C. CEMETERIES AND CREMATORIES

CHAPTER 715. CERTAIN HISTORIC CEMETERIES

Sec. 715.001. DEFINITIONS. In this chapter:

(1) "Burial park," "cemetery purposes," "crematory," "mausoleum," and "plot" have the meanings assigned by Section 711.001.

(2) "Cemetery" means a place that is used for interment, including a graveyard, burial park, or a mausoleum located on the grounds of a graveyard or burial park.

(3) "Nonprofit corporation" means a corporation not for profit subject to the provisions of the Texas Non-Profit Corporation Act (Article 1396-1.01, et seq., Vernon's Texas Civil Statutes).

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.002. PETITION OF NONPROFIT CORPORATION. A nonprofit corporation organized under this chapter to restore, operate, and maintain a historic cemetery may petition the district court of the county in which the cemetery is located to authorize the nonprofit corporation to restore, operate, and maintain the cemetery.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.003. PARTIES TO ACTION. An action commenced under this chapter shall be brought by the incorporators of the nonprofit corporation on behalf of the nonprofit corporation. The necessary parties to the action on which citation shall be served under Section 715.006 are:

(1) the record owners of the real property comprising the historic cemetery;

(2) the owners of plots in the cemetery, who may be designated as a class in the petition;

(3) the Texas Historical Commission; and

(4) the Texas Funeral Service Commission.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.  
Amended by Acts 2003, 78th Leg., ch. 562, Sec. 40, eff. Sept. 1,  
2003.

Sec. 715.004. CONTENTS OF PETITION. (a) A petition filed by a nonprofit corporation under this chapter must contain a legal description of the real property comprising the historic cemetery and must aver to the court that:

(1) the nonprofit corporation, through its members and incorporators, has a religious, ethnic, historic, or cultural relationship to the cemetery;

(2) the cemetery was established more than 75 years before the date the action was commenced;

(3) a viable organization of plot owners of the cemetery does not exist; and

(4) the cemetery threatens or endangers the public health, safety, comfort, or welfare.

(b) The petition must be accompanied by the written plan described by Section 715.005.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.005. WRITTEN PLAN. (a) The written plan accompanying the nonprofit corporation's petition must include:

(1) a description of the actions to be taken by the nonprofit corporation to restore, operate, and maintain the historic cemetery, which must include:

(A) repair of any fences;

(B) straightening, leveling, and resetting of memorials or embellishments in the cemetery that are a threat or danger to the public health, safety, comfort, or welfare;

(C) taking proper steps to restore and continuously operate and maintain the cemetery in an orderly and decent fashion that does not endanger the public health, safety, comfort, or welfare;

(D) restoration of damaged memorials; and

(E) restoration and maintenance of cemetery elements as defined by Section 711.001;

(2) the anticipated costs of the actions described under Subdivision (1);

(3) the time that the actions described by Subdivision (1) will be commenced and the time that it is anticipated the actions will be completed;

(4) a description of the actions to be taken by the nonprofit corporation for the proper conduct of its business and for the protection of the cemetery and the principles, plans, and ideals on which the cemetery was established;

(5) the percentage of the total purchase price of each plot in the cemetery sold and conveyed by the nonprofit corporation to be deposited in the trust fund established under Section 715.011, which must be at least 10 percent of the total purchase price of the plot; and

(6) a description of the records to be maintained by the nonprofit corporation, including records regarding:

(A) the sale of plots in the cemetery;

(B) the interments in the cemetery;

(C) the total purchase price received from the sale of each plot in the cemetery;

(D) the percentage of the total purchase price of each plot in the cemetery deposited in the trust fund established under Section 715.011; and

(E) the income received by the nonprofit corporation from the trust fund established under Section 715.011 and the manner in which the income is used by the nonprofit corporation for the maintenance and care of the cemetery.

(b) After the written plan is filed, the court may require that the nonprofit corporation modify the plan to include other matters specified by the court.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Amended by:

Acts 2009, 81st Leg., R.S., Ch. 914 (H.B. [2927](#)), Sec. 16, eff. September 1, 2009.

Sec. 715.006. SERVICE OF CITATION. (a) Before the 31st day after the date an action is commenced by a nonprofit corporation

under this chapter, the nonprofit corporation shall cause citation to be issued and served by certified mail, return receipt requested, on:

(1) the record owners of the real property comprising the cemetery at their last known addresses;

(2) the owners of plots in the cemetery at their last known addresses;

(3) the Texas Historical Commission at its office in Austin, Texas;

(4) the Texas Funeral Service Commission; and

(5) the county auditor of the county in which the cemetery is located.

(b) The citation must be accompanied by a copy of the petition.

(c) If the address or identity of a plot owner is not known and cannot be ascertained with reasonable diligence, service by publication shall be made on the plot owner by publishing notice at least three times in a newspaper of general circulation in the county in which the cemetery is located. If there is not a newspaper of general circulation in the county in which the cemetery is located, the notice may be published in a newspaper of general circulation in an adjoining county.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Amended by Acts 2003, 78th Leg., ch. 562, Sec. 41, eff. Sept. 1, 2003.

Sec. 715.007. HEARING. (a) Not later than the 90th day after the date the petition is filed, the court shall hold a hearing on the petition.

(b) Notice of the hearing shall be given by the nonprofit corporation to the parties listed in Section 715.003 not later than the 30th day before the date of the hearing.

(c) The notice shall be given in the manner prescribed by Section 715.006 for service of citation.

(d) At the hearing, each of the parties listed in Section 715.003 shall be given an opportunity to be heard by the court and to answer the petition of the nonprofit corporation.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.008. COURT ORDER. (a) The court shall issue an order authorizing the nonprofit corporation to restore, operate, and maintain the cemetery if the court finds that:

(1) the facts stated in the petition filed by a nonprofit corporation under this chapter are true and correct;

(2) the written plan accompanying the petition demonstrates the nonprofit corporation's ability to restore, operate, and maintain the historic cemetery in accordance with this chapter; and

(3) authorizing the nonprofit corporation to restore, operate, and maintain the cemetery is in the best interest of the public.

(b) The written plan must be incorporated in the court's order.

(c) The court's order is binding on all parties to the action.

(d) The court retains continuing jurisdiction to monitor and review compliance with the court's order.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.009. NONPROFIT CORPORATION. (a) The members of a nonprofit corporation authorized to restore, operate, and maintain a historic cemetery are the plot and property owners of the cemetery.

(b) Each plot owner may exercise the rights and privileges of a member of the nonprofit corporation without regard to whether the plot owner acquired the plot before or after the nonprofit corporation was organized.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.010. ORGANIZATIONAL MEETING. (a) A nonprofit corporation authorized to restore, operate, and maintain a historic cemetery shall, not later than the 10th day after the date of the order of the court under Section 715.008:

(1) publish notice of the time and place of the

organizational meeting of the members of the nonprofit corporation in a newspaper having general circulation in the county in which the cemetery is located or, if there is no newspaper of general circulation in the county in which the cemetery is located, in a newspaper of general circulation in an adjoining county; and

(2) post written notice of the time and place of the meeting at the cemetery.

(b) The notice published under Subsection (a)(1) must be published not later than the 30th day before the date of the meeting and repeated twice before the date of the meeting. The notice may not be published more than once a week.

(c) The written notice posted under Subsection (a)(2) must be posted not later than the 30th day before the date of the hearing and must remain posted until the date of the hearing.

(d) At the organizational meeting of the members of a nonprofit corporation authorized to restore, operate, and maintain a historic cemetery, a majority of the members present and voting at the meeting shall elect a board of directors of the nonprofit corporation. Directors and officers are not required to be members of the nonprofit corporation.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.011. POWERS AND DUTIES OF NONPROFIT CORPORATION; TRUST FUND. (a) A nonprofit corporation authorized to restore, operate, and maintain a historic cemetery may divide cemetery property into lots and subdivisions for cemetery purposes and charge reasonable assessments on the property for the purposes of general improvement and maintenance of the cemetery.

(b) The nonprofit corporation may sell and convey the exclusive right of sepulture in any unsold plot in the cemetery if, before the sale and conveyance of any right of sepulture, the nonprofit corporation establishes a trust fund to provide for the perpetual maintenance of the cemetery.

(c) The county auditor of the county in which the cemetery is located shall act as the trustee of the trust fund.

(d) The nonprofit corporation shall deposit in the trust fund the amount required under the written plan incorporated in the

court's order not later than the 20th day after the last day of the month in which the total purchase price of a plot has been paid in full.

(e) The nonprofit corporation shall file a monthly statement with the county auditor, signed by the president and secretary of the nonprofit corporation, that verifies that all funds required to be deposited in the trust fund during the preceding month have been deposited in the trust fund and that any income disbursed from the trust fund during the preceding month was used by the nonprofit corporation for the maintenance and care of the cemetery.

(f) The principal of a trust fund established under this section may not be reduced voluntarily, and it must remain inviolable.

(g) The trust fund and the trustee are governed by Title 9, Property Code.

(h) The trustee may receive and hold as part of the trust fund any property contributed as a gift or grant to the trust fund for the perpetual maintenance of the historic cemetery.

(i) The income of the trust fund may be applied in the manner the directors of the nonprofit corporation determine to be for the best interest of the cemetery and may be used only for the maintenance and care of the cemetery.

(j) A district court of the county in which the historic cemetery is located shall appoint a suitable successor trustee of a trust fund established under this section if the county auditor resigns the position of trustee of the trust fund or fails to act as its trustee.

(k) The county auditor or other person who acts as the trustee of a trust fund established under this section is not civilly or criminally liable for acts performed in the good faith administration of the trust fund.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.012. CREMATORY PROHIBITED. A nonprofit corporation authorized to restore, operate, and maintain a cemetery under this chapter may not construct, establish, or maintain a

crematory.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.013. ADJACENT OR CONTIGUOUS CEMETERY. A nonprofit corporation authorized to restore, operate, and maintain a historic cemetery may not acquire land for cemetery purposes that is adjacent or contiguous to the cemetery unless the adjacent or contiguous land is operated as a perpetual care cemetery under Chapter 712. The nonprofit corporation may not petition the district court of the county in which the cemetery is located to remove the dedication with respect to all or any portion of the cemetery.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.014. CEMETERY OPEN TO PUBLIC. A historic cemetery restored, operated, and maintained by a nonprofit corporation under this chapter must remain open to the public.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

Sec. 715.015. EXEMPTION. This chapter does not apply to:

- (1) a perpetual care cemetery; or
- (2) a family cemetery.

Added by Acts 1995, 74th Leg., ch. 899, Sec. 1, eff. Aug. 28, 1995.

[<<Prev Rule](#)

# Texas Administrative Code

[Next Rule>>](#)

**TITLE 13**

CULTURAL RESOURCES

**PART 2**

TEXAS HISTORICAL COMMISSION

**CHAPTER 22**

CEMETERIES

**RULE §22.6**

**Historic Texas Cemeteries**

(a) Any cemetery that is deemed worthy of recognition and preservation for its historic associations is eligible for designation as a Historic Texas Cemetery. The purpose of this designation is to alert the present and future owners of land adjacent to the cemetery of the existence of the cemetery. Such cemeteries are eligible for this status if established at least 50 years before the date of application. The History Programs Committee may waive the age requirement for cemeteries that are deemed to be exceptionally significant. Designation as a Historic Texas Cemetery does not restrict in any way the private owner's use of the land outside the cemetery boundaries.

(b) Any individual, organization, or agency may submit an application for designation. The Commission shall notify the owner of the property containing a cemetery, or adjacent landowners having common boundaries with the cemetery, about the proposed designation.

(c) Applications for Historic Texas Cemetery designation are available at the Commission or on the Commission's website. Completed applications, along with the processing fee of \$25 (twenty-five dollars), shall be sent to the Commission for processing and review. County Historical Commissions will be notified of applications submitted for cemeteries in their county and will be provided a copy of the application materials. The Commission may request further documentation if necessary. The burden of proof of the existence of the cemetery is on the applicant. If the application is accepted for designation, the applicant will be sent a Declaration of Dedication to be filed with the appropriate county clerk's office. Applications rejected because of ineligibility may be reviewed by the History Programs Committee upon the request of the applicant. The cemetery will be officially recognized as a Historic Texas Cemetery when the applicant forwards a copy of the recorded Declaration of Dedication and exhibits which include the filing date and recording data.

(d) Designation as a Historic Texas Cemetery must be based on complete documentation of the cemetery's eligibility as outlined in the application form available from the Commission. Examples of documentation that may be requested include deed and title, plot records, archival documents, photographs, oral histories, and archeological data.

(e) The Historic Texas Cemetery designation may be removed only by action of the Commission or by an order of the court of proper jurisdiction removing the dedication or permitting the removal of the cemetery and the return of the land to other purposes. A transfer of ownership does not result in a removal of the dedication.

(f) A Historic Texas Cemetery may be further recognized with an Official Historic Texas Cemetery Marker, available for purchase through the Commission. The marker shall be placed in accordance with §21.7 of this title (relating to Application Requirements) and §21.9 of this title (relating to Application Evaluation Procedures).

**Source Note:** The provisions of this §22.6 adopted to be effective May 20, 2010, 35 TexReg 3809; amended to be effective September 11, 2013, 38 TexReg 5876