

HEALTH & SAFETY CODE

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.