

CHAPTER 634

H.B. No. 1213

AN ACT

relating to the laws governing cemeteries and perpetual care cemeteries; providing civil and criminal penalties.

Be it enacted by the Legislature of the State of Texas:

SECTION 1. Section 711.001, Health and Safety Code, is amended to read as follows:
Sec. 711.001. DEFINITIONS. In this chapter:

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

(2) "Cemetery" means a place that is ~~[dedicated to and that is]~~ used or intended to be used for interment, and includes a graveyard, burial park, or mausoleum.

(3) "Cemetery organization ~~[association]~~" means ~~[an organization that is]~~:

(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) ~~[or]~~ a corporation, *either for profit or not for profit, that is*; ~~and~~

~~[(B)]~~ authorized by its articles of incorporation 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.

(6) "Cremated remains" 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* ~~[remains after incineration in a crematory]~~.

(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* ~~[reduction of remains to cremated remains]~~.

(8) "Crematory" means a structure containing a furnace used or intended to be used for the *cremation* ~~[incineration]~~ 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* ~~[uncremated]~~ remains.

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

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

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

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

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

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

(19) [(16)] "Lawn crypt" means a subsurface concrete and reinforced steel receptacle installed in multiple units for burial of human remains [in a coffin].

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

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

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

(23) [(20)] "Perpetual care" or "endowment care" means the maintenance, repair, and care of all [in proper order of the sod, foliage, and] places in the cemetery [in which interments have been made].

(24) [(21)] "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) [(22)] "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) [(23)] "Plot owner" means a person:

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

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

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

(28) [(24)] "Remains" means either human remains or cremated remains [the body of a decedent].

SECTION 2. Section 711.002, Health and Safety Code, is amended to read as follows:

Sec. 711.002. DISPOSITION OF REMAINS; DUTY TO INTER. (a) Unless a decedent has left [other] 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 [person'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 [(2)] the decedent's surviving adult children;

(4) either one of [(3)] the decedent's surviving parents;

(5) any one of [(4)] the decedent's surviving adult siblings; or

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

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

(g) [(e)] A person may provide written directions for the disposition [instructions to direct the preparation for and type or place of interment] of the person's remains in a will, a

prepaid funeral contract, or a written instrument signed and acknowledged by such person. *The directions [instructions] may be modified or revoked only by a subsequent writing signed and acknowledged by such person [in writing]. The person [or persons] otherwise entitled to control the disposition of a decedent's [the] remains under this section shall faithfully carry out the directions [instructions] of the decedent to the extent that the decedent's estate or the person controlling the disposition are financially able to do so.*

(h) [(f)] If the *directions [instructions]* 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 [instructions]* are valid to the extent to which they have been acted on in good faith.

(i) [(g)] A cemetery organization, a business operating a crematory or columbarium or both, a funeral director or an embalmer, or a funeral establishment shall ~~[association is]~~ not be liable for carrying out the *written directions [instructions]* of a [the] decedent or the *directions of any person who represents that the person is entitled to control the disposition of the decedent's remains [unless it has actual notice that the representation is untrue].*

(j) 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.

SECTION 3. Section 711.003, Health and Safety Code, is amended to read as follows:

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[, and grave, niche, or crypt] in which the remains are interred.

SECTION 4. Section 711.004, Health and Safety Code, is amended to read as follows:

Sec. 711.004. REMOVAL OF REMAINS. (a) Remains~~[, including cremated remains,]~~ interred in a cemetery may be removed from the cemetery with the *written* consent of the cemetery organization ~~[association]~~ 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 [the]* person.

(c) If the consent required by Subsection (a) cannot be obtained, the remains may be removed by permission of the county 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 ~~[association]~~ operating the cemetery in which the remains are interred;
- (2) ~~[the plot owner or owners;~~
- [(3)] each person whose consent is required for removal of the remains under Subsection (a) ~~[who does not consent to the removal];~~ and
- (3) [(4)] any other person that the court requires to be served.

(d) For the purposes of Subsection (c), 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.

(e) Subsections (a)–(d) do not apply to the removal of remains:

- (1) from one plot to another plot in the same cemetery;
- (2) by the cemetery *organization* [~~association~~] from a plot for which the purchase price is past due and unpaid, to another suitable place; or
- (3) on the order of a court or person who conducts inquests.

(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 Board of Health 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 make and keep a record of the disposition of the remains.

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

SECTION 5. Section 711.006, Health and Safety Code, is amended to read as follows:

Sec. 711.006. LIMITATIONS ON CREMATORY CONSTRUCTION AND OPERATION. (a) A crematory may be constructed, established, or maintained only in a burial park having a columbarium, plot, or mausoleum [~~amply~~] equipped for *the* interment of *cremated* remains [~~cremated at that crematory~~].

(b) The crematory may be in the same fireproof structure as the columbarium, plot, or mausoleum, or in a separate fireproof building in the same [~~cemetery or~~] burial park as the columbarium, plot, or mausoleum.

(c) *A crematory that cremates a decedent's human remains shall dispose of the cremated remains by:*

- (1) *delivering the cremated remains to or as directed by the funeral establishment that contracted to provide for the cremation;*
- (2) *delivering the cremated remains as directed by the person who contracted for the cremation; or*
- (3) *if not delivered as provided by Subdivision (1) or (2), by permanent interment of the cremated remains in a plot.*

(d) *Not later than the 90th day after the cremation, the crematory shall send a written notice by registered or certified mail to the funeral establishment or person who contracted for the cremation stating that the cremated remains will be interred under Subsection (c)(3) unless the notified funeral establishment or person, or other person authorized by the notified funeral establishment or person, claims and removes the cremated remains not later than the 60th day after the date of the notice.*

(e) *A crematory is not liable for any actions taken by the crematory in accordance with Subsection (c) or (d) [~~cremated remains not removed from the crematory for permanent deposit elsewhere shall be permanently interred in a grave, crypt, or niche not later than the 30th day after the date of cremation~~].*

SECTION 6. Section 711.007, Health and Safety Code, is amended to read as follows:

Sec. 711.007. ~~[NONCONFORMING OR ABANDONED CEMETERY AS A]~~ NUISANCE; ABATEMENT AND INJUNCTION. (a) A 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 ~~[and has no perpetual care fund regularly and legally established].~~
- (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) ~~[(2)]~~ the district attorney of the county, if the cemetery is located in an area of the county not described by Subdivision (3) ~~[(4)];~~ ~~[(5)]~~
 - (5) ~~[(3)]~~ 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; or
 - (6) *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.

SECTION 7. Section 711.008, Health and Safety Code, is amended to read as follows:

Sec. 711.008. LOCATION OF CEMETERY. (a) Except as provided by Subsections (b) and ~~[(c), (e),]~~ (c), ~~and (e),]~~ an individual, corporation, *partnership, firm, trust,* or association may not *establish or operate a cemetery, or use any land for the interment of remains,* ~~[inter remains in a cemetery]~~ 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; or
 - (2) the establishment and use of a columbarium by an organized religious society or sect as part of or attached to the principal church building owned by the society or sect.
- (c) A cemetery *organization* ~~[association]~~ operating a cemetery that heretofore was used and maintained inside the limits prescribed by Subsection (a) may acquire land *that is adjacent but not necessarily contiguous* to the cemetery for cemetery purposes if additional land is required. That land may be used as an addition to the cemetery.

(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 217,250 and less than 217,450 that borders the Gulf of Mexico.* ~~[Subsections (e)–(i) apply to the establishment or use of a cemetery in a county with a population of less than 235,000 that borders the Gulf of Mexico.]~~

~~(e) [Not later than August 31, 1990, a person who desires to establish or use a cemetery may file a written application to establish or use the cemetery if the cemetery is located inside a municipality and 80 percent or more of the municipality's boundaries are contiguous with the boundaries or extraterritorial jurisdiction of another municipality or if the cemetery is located outside a municipality but within the distance prohibited by Subsection (a) for the municipality. The application must be filed with the governing body of the municipality.~~

~~[(f) If the location of the proposed cemetery is inside the prohibited distance from more than one municipality, the person must file a written application with the governing body of each municipality.~~

~~[(g) The governing body of a municipality by ordinance shall prescribe the information required in an application submitted under this subsection or Subsection (e).~~

~~[(h) The governing body may grant the application if it determines that the establishment or use of the cemetery does not adversely affect public health, safety, and welfare.~~

~~[(i) Before the person may establish or use the cemetery, the application must be granted by each municipality required to receive an application under this section.~~

~~[(j) 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.~~

SECTION 8. Section 711.009, Health and Safety Code, is amended to read as follows:

Sec. 711.009. **AUTHORITY OF CEMETERY KEEPER.** (a) The superintendent, sexton, or other person in charge of a cemetery has the same powers, [and] 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* [association] 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.

SECTION 9. Section 711.021, Health and Safety Code, is amended to read as follows:

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 either:

(1) a nonprofit corporation organized in accordance with Section A or B, Article 3.01, Texas Non-Profit Corporation Act (Article 1396-3.01, Vernon's Texas Civil Statutes), or with Section 711.022; or

(2) a private corporation operated for profit.

(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* [~~a corporation~~] 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.

SECTION 10. The heading to Subchapter C, Chapter 711, Health and Safety Code, is amended to read as follows:

SUBCHAPTER C. CEMETERY ORGANIZATIONS [~~ASSOCIATIONS~~]

SECTION 11. Section 711.031, Health and Safety Code, is amended to read as follows:

Sec. 711.031. RULES; CIVIL PENALTY. (a) A cemetery *organization* [~~association~~] may adopt and enforce rules:

(1) concerning the use, care, control, management, restriction, and protection of the cemetery operated by the *cemetery organization* [~~association~~];

(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* [~~association~~] 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* [~~association~~] 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* [~~association'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* [~~association~~] may recover the amount of the penalty in a civil action.

SECTION 12. Subchapter C, Chapter 711, Health and Safety Code, is amended by adding Section 711.0311 to read as follows:

Sec. 711.0311. *DESECRATION OF CEMETERY.* (a) *A person commits an offense if the person acts without proper legal authority and knowingly:*

(1) *destroys or damages the remains of a decedent;*

(2) *removes any portion of the remains of a decedent from a plot or other repository of remains;*

(3) *desecrates remains; or*

(4) *obliterates, vandalizes, or desecrates a plot or other repository of remains.*

(b) *An offense under Subsection (a) is a felony of the third degree. The person found guilty of committing the offense shall provide restitution to the cemetery organization for any damage caused by the person.*

(c) A person commits an offense if the person acts without proper legal authority and knowingly:

(1) defaces, vandalizes, injures, or removes a gravestone, monument, or other structure commemorating a deceased person or group of persons, whether located within or outside of a cemetery;

(2) obliterates, vandalizes, or desecrates a park or other area clearly designated to preserve and perpetuate the memory of a deceased person or group of persons;

(3) obliterates, vandalizes, or desecrates plants, trees, shrubs, or flowers located on or around a cemetery; or

(4) obliterates, vandalizes, or desecrates a fence, rail, curb, or other structure of a similar nature intended for the protection or for the ornamentation of any plot, gravestone, monument, or other structure of similar character.

(d) An offense under Subsection (c) is a Class C misdemeanor. The person found guilty of committing the offense shall provide restitution to the cemetery organization for the amount of any damage caused by the person.

(e) Subsections (a)–(d) do not apply to the removal or unavoidable breakage or injury by a cemetery organization of anything placed in or on any portion of its cemetery in violation of any of the rules of the cemetery organization, to the removal of anything placed in the cemetery in violation of any of the rules of the cemetery organization, or to the removal of anything placed in the cemetery by or with the consent of the cemetery organization that in its judgment has become wrecked, unsightly, or dilapidated.

(f) If an unemancipated minor is found guilty of violating Subsection (a) or (c) and is unable to provide restitution to the cemetery organization, the minor may be required to spend that amount of time in service to the community as is determined by the court or the parents or legal guardians of the minor may be required to provide restitution to the cemetery organization for the amount of any damage caused by the offense, up to the total amount allowed under law.

(g) A person commits an offense if the person knowingly enters or knowingly remains on the premises of a cemetery without authorization during hours that the cemetery is posted as closed to the public. An offense under this subsection is a Class C misdemeanor.

(h) This section does not prevent a cemetery organization or the owner of a plot, gravestone, monument, or other structure of similar character from maintaining a civil action for the recovery of damages caused by any injury resulting from a violation of this section.

SECTION 13. Section 711.032, Health and Safety Code, is amended to read as follows:

Sec. 711.032. DISCRIMINATION BY RACE, COLOR, OR NATIONAL ORIGIN PROHIBITED. (a) A cemetery organization ~~[association]~~ 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 ~~[association]~~ or of a ~~[deed or]~~ certificate of ownership or other instrument of conveyance ~~[granted or]~~ issued by a cemetery organization ~~[association]~~ that prohibits interment in a cemetery because of the race, color, or national origin of a decedent is void.

SECTION 14. Section 711.033, Health and Safety Code, is amended to read as follows:

Sec. 711.033. PROPERTY ACQUISITION BY CEMETERY ORGANIZATION ~~[ASSOCIATION]~~; RECORDING TITLE. (a) A cemetery organization ~~[association]~~ 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 ~~[association]~~ that acquires property may record ~~[the association's]~~ title to its ~~[the]~~ property with the county clerk of the county in which the property is located if its ~~[the association]~~ president and secretary or other authorized officer acknowledge a declaration executed by the cemetery organization ~~[association]~~ that describes the property and declares the cemetery organization's ~~[association's]~~ intention to use the property or a part of the property for interment purposes.

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

(d) A cemetery *organization* [~~association~~] may by condemnation acquire property in which remains may be interred, and the acquisition of that property is for a public purpose.

SECTION 15. Section 711.034, Health and Safety Code, is amended to read as follows:

Sec. 711.034. DEDICATION. (a) A cemetery *organization* [~~association~~] 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* [~~blocks, lots, avenues, walks, or other subdivisions~~], and make a map or plat of the property showing the *plots contained within the perimeter boundary* [~~subdivisions, with descriptive names or numbers~~]; 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* [, ~~halls, rooms, corridors, elevators, or other divisions of the property,~~] with descriptive names and numbers.

(b) The cemetery *organization* [~~association~~] 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* [~~association~~] 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 [~~association~~] *officers of the cemetery organization*;

(2) signed by the [~~association~~] president or vice-president and [by] the secretary of the *cemetery organization* [~~association~~], 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. If a change is made, the *cemetery organization* [~~association~~] shall file an amended map or plat.

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

SECTION 16. Section 711.035, Health and Safety Code, is amended to read as follows:

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* [~~association~~], nonuse by the *cemetery organization* [~~association~~], 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, 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* [~~association~~] 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.

SECTION 17. Section 711.036, Health and Safety Code, is amended to read as follows:

Sec. 711.036. REMOVAL OF DEDICATION. (a) *A cemetery organization may petition a district court of the county in which its [a] dedicated cemetery is located to [may, by order,] 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) ~~[A proceeding may be brought by:~~

~~[(1) 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;~~

~~[(2) the district attorney of the county, if the cemetery is located in an area of the county not described by Subdivision (1); or~~

~~[(3) the owner of property situated so that its value is affected by the cemetery.~~

~~[(e)] The court shall [may] order the removal of the dedication [of a cemetery] on notice and proof satisfactory to the court.~~

~~[(d) The district court in a county in which a dedicated cemetery is located may, in a proceeding brought by the affected political subdivision, remove the dedication from property lying in the path of proposed construction of or on a highway, thoroughfare, road, or street if:~~

~~[(1) the United States, this state, a county, a municipality, or another governmental subdivision of this state determines that a new highway, thoroughfare, road, or street will be constructed along a proposed route or that an existing highway, thoroughfare, road, or street will be widened;~~

~~[(2) the determination is a matter of public record; and~~

~~[(3) after the determination, property lying in the path of the proposed route is dedicated for cemetery purposes.~~

~~[(e) Dedication of property for cemetery purposes under the circumstances described by Subsection (d) is presumed to be made in fraud of the rights of the public and for the sole purpose of enhancing the value of property to be condemned.]~~

SECTION 18. Section 711.037, Health and Safety Code, is amended to read as follows:

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

SECTION 19. Section 711.038, Health and Safety Code, is amended to read as follows:

Sec. 711.038. SALE OF PLOTS. (a) *A cemetery organization [association] 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; [and]*

(2) *subject to the rules of the cemetery organization [association] 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* [association] must be signed by the [association] president or vice-president and the [association] secretary or other officers authorized by the *cemetery organization* [association].

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

(e) A person is not required to be licensed to sell a plot in a dedicated cemetery.

SECTION 20. Section 711.039, Health and Safety Code, is amended to read as follows:

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* [association]:

(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;*

(2) the surviving spouse, if any, and children of the owner; or

(3) [(2)] the surviving spouse, if any, and the heirs-at-law of the owner, if there is no surviving child 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 [~~by express reference to the plot in a will or by written declaration filed and recorded in the office of the cemetery association~~], 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.

SECTION 21. Section 711.040, Health and Safety Code, is amended to read as follows:

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* [association]

written notice of the designation. If notice is not filed, the cemetery *organization* [association] may inter or permit an interment in the plot at the request or direction of a registered co-owner of the plot.

SECTION 22. Subchapter C, Chapter 711, Health and Safety Code, is amended by adding Section 711.041 to read as follows:

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 reasonable hours 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.

SECTION 23. Section 711.052, Health and Safety Code, is amended to read as follows:

Sec. 711.052. 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:

(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; or

(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* [operator] for the represented purpose.

(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. [An officer, agent, or employee of a cemetery or cemetery association commits an offense if the officer, agent, or employee pays or offers to pay a commission, rebate, or gratuity to a funeral director or the funeral director's employee].

(c) A cemetery organization or an officer, agent, or employee of the cemetery organization [association or an officer or employee of the association] commits an offense if the cemetery organization, officer, agent, or employee of a cemetery organization [association, officer, or employee] 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) An offense under this section is a *Class A misdemeanor* [punishable by:

~~(1) a fine not to exceed \$500; or~~

~~(2) if the defendant is an individual, by a fine not to exceed \$500, confinement in the county jail for a term not to exceed six months, or both].~~

SECTION 24. Section 712.001, Health and Safety Code, is amended to read as follows:

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

(b) In this chapter:

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

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

(3) "Corporation" means a corporation that is organized under this chapter, or any corresponding statute in effect before September 1, 1993, to operate one or more perpetual care cemeteries in this state.

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

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

SECTION 25. Section 712.002, Health and Safety Code, is amended to read as follows:

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

(1) a family, fraternal, or community cemetery;

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

(3) a *nonprofit corporation organized by plot owners*; or

(4) a church, a religious society or denomination, or *an entity* ~~[a corporation]~~ solely administering the temporalities of a church or religious society or denomination.

SECTION 26. Section 712.003, Health and Safety Code, is amended to read as follows:

Sec. 712.003. INCORPORATION REQUIRED; MINIMUM CAPITAL. (a) A perpetual care cemetery may not be *operated in this state unless articles of incorporation are filed* ~~[organized unless the cemetery files]~~ with the secretary of state ~~[articles of incorporation]~~ showing:

(1) subscriptions and *payments* ~~[payment]~~ in cash for the corporation's ~~[of the cemetery's]~~ full capital stock;

(2) the location of *its perpetual care* ~~[the]~~ cemetery ~~[property]~~; and

(3) a certificate showing the deposit *in its fund of the minimum amount required under* ~~[of the cemetery's perpetual care and maintenance guarantee fund in accordance with]~~ Section 712.004.

(b) A *corporation chartered on or after September 5, 1955, and before September 1, 1993,* ~~[perpetual care cemetery]~~ 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, must have a minimum capital of \$75,000* ~~[This section does not apply to a cemetery corporation chartered before September 5, 1955, except that a corporation that amends its charter must comply with the minimum requirements of this section].~~

(d) A nonprofit ~~[cemetery]~~ association or corporation operated solely for the benefit of *plot owners* ~~[its members]~~ seeking to convert a ~~[permanent care]~~ cemetery to a perpetual care cemetery under *this chapter* ~~[Section 712.004 and Subchapter B]~~ is not required to ~~[issue capital stock to]~~ meet the ~~[minimum capital]~~ 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.

SECTION 27. Subchapter A, Chapter 712, Health and Safety Code, is amended by adding Section 712.0031 to read as follows:

Sec. 712.0031. NOTICES TO BANKING DEPARTMENT. (a) *Not later than the 30th day after the date a corporation files its articles of incorporation with the secretary of state, the corporation shall notify the banking department in writing of its intent to operate a perpetual care cemetery in this state. The notice shall be accompanied by a filing fee of \$500, shall be sworn to and verified under oath by all persons subscribing to the capital stock of the corporation, and shall contain:*

(1) *the information required to be provided to the secretary of state under Section 712.003;*

(2) the names and addresses of any other persons or entities who are or will be beneficial owners of the capital stock of the corporation or otherwise share an interest in the ownership of the corporation's capital stock, or who have paid or will pay any portion of the consideration therefor;

(3) the name and address of any person or entity to whom the capital stock or assets of the corporation are or will be pledged as security for any loan; and

(4) the name and address of the person who will actively manage the cemetery operations of the corporation along with a brief statement of that person's working experience in the cemetery industry.

(b) A cemetery operations manager must have at least two years of experience in cemetery management.

(c) If the corporation fails to provide to the banking department the information prescribed by Subsection (a), the commissioner may instruct the secretary of state to cancel the corporation's charter and serve notice of the cancellation on the corporation by registered or certified letter, addressed to the corporation's address.

(d) A corporation shall notify the commissioner in writing of any change in the controlling ownership interest of the capital stock of the corporation not later than the 30th day following the change of controlling ownership interest.

SECTION 28. Section 712.004, Health and Safety Code, is amended to read as follows:

Sec. 712.004. ~~PERPETUAL CARE TRUST [AND MAINTENANCE GUARANTEE]~~ 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, [~~a perpetual care cemetery~~] must establish a [~~minimum perpetual care and maintenance guarantee~~] fund by permanently depositing in cash with the trustee of the fund:

- (1) \$15,000, if the corporation [~~cemetery~~] has capital stock of \$15,000;
- (2) \$30,000, if the corporation [~~cemetery~~] has capital stock of \$30,000; or
- (3) \$50,000, if the corporation [~~cemetery~~] 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 [~~guarantee~~] fund shall be permanently set aside and deposited in trust with the trustee in accordance with Subchapter B.

~~[(e) The amount of deposit required by law to be placed in trust for the perpetual care and maintenance of the cemetery from the receipts for the sale of a plot may, on the sale, be credited against the original perpetual care and maintenance guarantee fund until the amount of the credits equals the amount of the original deposit. After credits for that amount have been taken, the corporation shall deposit in the perpetual care trust fund the minimum amount required by law and any additional amount required by the rules, trust agreement, or contract of the cemetery association for the cemetery's perpetual care and maintenance.]~~

~~[(d) This section does not apply to a cemetery corporation chartered before September 3, 1945, except that a corporation that amends its charter must comply with the minimum requirements of this section.]~~

SECTION 29. Section 712.005, Health and Safety Code, is amended to read as follows:

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

(c) If the corporation does not begin *actual* ~~[active]~~ operation as agreed, the commissioner by order *may* ~~[shall]~~ 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.

SECTION 30. Section 712.007, Health and Safety Code, is amended to read as follows:

Sec. 712.007. NOTICE OF PERPETUAL CARE REQUIRED. (a) A *corporation* ~~[perpetual care cemetery]~~ shall post a sign ~~[in a conspicuous place in all offices in which sales are conducted or, if there is no office,]~~ at or near a ~~[the]~~ cemetery entrance or administration building and readily accessible to the public.

(b) The sign must contain the following~~[, in the manner and order stated]:~~

(1) "Perpetual Care Cemetery," or "Endowment Care Cemetery" ~~[in a minimum of 48-point black type];~~

(2) the names *and telephone numbers* of two of the corporation's ~~[cemetery]~~ officers or ~~[and]~~ directors; and

(3) the name of *each* ~~[the]~~ bank or trust company entrusted with the fund.

(c) A *corporation* ~~[perpetual care cemetery]~~ must include the following statement in each *sales contract*, certificate of ownership, ~~[sales contract,]~~ 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*, ~~[keep the sod in]~~ repair, and *care for the cemetery* ~~[all places where interments have been made in order and to care for trees and shrubs planted by the cemetery]."~~

(d) The term "endowment care" may be substituted for the term "perpetual care" in the statement required by Subsection (c).

SECTION 31. Section 712.021, Health and Safety Code, is amended to read as follows:

Sec. 712.021. ESTABLISHMENT AND PURPOSES OF FUND. (a) A *corporation* ~~[cemetery association]~~ that ~~[maintains,]~~ operates~~[, or conducts]~~ a perpetual care cemetery in this state~~[, including a permanent maintenance or free care cemetery,]~~ shall have a ~~[perpetual care trust]~~ 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* ~~[cemetery association]~~.

(b) ~~[If there is no trust company or bank with trust powers that is qualified and willing to accept the trust funds at the regular fees established by the Texas Trust Code (Section 111.001 et seq., Property Code) and that is located in the county in which the cemetery association is located, the fund may be established with a board of trustees composed of three or more persons, no two trustees of which are also directors.]~~

~~[(c)]~~ 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* ~~[other]~~ funds of the *corporation*.

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

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

(e) ~~[(f)]~~ A corporation ~~[cemetery association]~~ 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) ~~[(g)]~~ 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 ~~[person contributing to the fund]~~ to persons interred and to be interred in *its perpetual care* ~~[the]~~ 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 trustees 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.*

SECTION 32. Section 712.022, Health and Safety Code, is amended to read as follows:

Sec. 712.022. *OPERATION OF PERPETUAL* ~~[ESTABLISHMENT OF FUND BY NONPERPETUAL]~~ CARE CEMETERY. ~~[(a)]~~ A corporation ~~[cemetery association]~~ authorized by law to operate a ~~[cemetery as a]~~ perpetual care cemetery but not doing so may do so if the corporation ~~[association]~~:

(1) notifies the commissioner; and

(2) establishes a fund as provided by Section 712.021 in *an* ~~[the]~~ 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* ~~[burial space]~~; or

(B) the minimum amount provided by Section 712.004.

~~[(b) If the amount of the fund is the minimum amount provided by Section 712.004, the cemetery association is entitled to a credit against amounts required by this chapter to be paid by the association into the fund. The amount of the total credits permitted is equal to the difference between the amount computed under Subsection (a)(2)(A) and the amount computed under Subsection (a)(2)(B).]~~

SECTION 33. Section 712.023, Health and Safety Code, is amended to read as follows:

Sec. 712.023. *VALIDITY OF CONTRIBUTIONS.* A contribution to a *fund* for ~~[general]~~ perpetual care is not invalid because of:

(1) indefiniteness or uncertainty of the person designated as beneficiary in the instrument *establishing the fund* ~~[creating the trust]~~; 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.

SECTION 34. Section 712.024, Health and Safety Code, is amended to read as follows:

Sec. 712.024. *AMENDMENT OF TRUST INSTRUMENT* ~~[AGREEMENT]~~. A corporation ~~[cemetery association]~~ and the trustee of a ~~[the]~~ fund ~~[providing perpetual care for the association's cemetery]~~ may, by agreement, amend the *instrument that established the fund* ~~[perpetual care trust agreement]~~ to include any provision that is consistent with this chapter.

SECTION 35. Section 712.025, Health and Safety Code, is amended to read as follows:

Sec. 712.025. *USE OF FUND INCOME.* ~~[(a)]~~ Fund income may be applied in the manner the directors of a corporation determine to be for the best interest of the corporation's *perpetual care* cemetery and may be used only for the perpetual care described by resolution, bylaw, or other action or instrument that established the fund, including the general care and maintenance of the property entitled to perpetual care in the *perpetual care* cemetery.

~~[(b) Fund income may not be used for improvement or embellishment of unsold property to be offered for sale.]~~

SECTION 36. Section 712.026, Health and Safety Code, is amended to read as follows:

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 ~~[part of the]~~ cemetery ~~[entitled to perpetual care]~~, 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 ~~[fund]~~ 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 ~~[fund]~~ income of the fund as required by this chapter.

(b) The suit for relief under this section must be brought by at least five ~~[plot]~~ owners of ~~[whose]~~ plots located in the perpetual care cemetery ~~[are entitled to perpetual care]~~.

SECTION 37. Section 712.027, Health and Safety Code, is amended to read as follows:

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

(b) ~~[The fund may not be invested without the written approval of an active officer of the cemetery association or a majority of its directors.]~~ An investment must be made at not more than the prevailing market value of the securities at the time of acquisition.

SECTION 38. Section 712.028, Health and Safety Code, is amended to read as follows:

Sec. 712.028. AMOUNT OF FUND DEPOSITS FROM SALES. (a) A corporation ~~[perpetual care cemetery]~~ shall deposit in its ~~[the]~~ fund an amount that is at least:

(1) the greater of:

(A) \$1.50 a square foot of ground area conveyed ~~[disposed of or sold]~~ as perpetual care property; or

(B) 10 percent of the total purchase price of that ground area;

(2) the greater of:

(A) \$90 for each crypt interment right for mausoleum interment or lawn crypt interment conveyed ~~[disposed of or sold]~~ as perpetual care property, or \$50 for each crypt interment right if that crypt is accessible only through another crypt; or

(B) five percent of the total purchase price of that crypt interment right; and

(3) the greater of:

(A) \$30 for each niche interment right for columbarium interment conveyed; or

(B) 10 percent of the total purchase price of that niche interment right ~~[disposed of or sold]~~.

(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 ~~[A cemetery may not operate as a perpetual care cemetery, including a permanent maintenance or free care cemetery, unless the cemetery complies with this section and Section 712.029].~~

SECTION 39. Section 712.029, Health and Safety Code, is amended to read as follows:

Sec. 712.029. ACCOUNTING FOR AND DEPOSITING AMOUNTS~~[- CIVIL PENALTY]~~. (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 ~~[burial space]~~, a commission may not be paid to a broker or salesman on the amount to be deposited in the fund.

(c) ~~[If the purchase price is payable in installments, each amount paid must be applied first to the balance not required to be deposited in the fund, and the remainder, on receipt by the seller, shall be deposited in the fund.]~~

~~[(d) A corporation [seller of a plot] shall deposit in its [the] fund the [required] 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 [amount is received].]~~

~~[(e) A seller who violates Subsection (d) is liable for a penalty of \$10 a day for each day of violation. The commissioner shall collect the penalty.]~~

~~[(f) If the seller refuses to pay the penalty, the commissioner shall report the refusal to the attorney general, who shall bring suit to recover the penalty, costs, and other relief requested by the attorney general as proper and necessary.]~~

SECTION 40. Section 712.030, Health and Safety Code, is amended to read as follows:

Sec. 712.030. USE OF GIFT FOR SPECIAL CARE OF PLOT [BURIAL SPACE] IN PERPETUAL CARE CEMETERY. ~~[(a)]~~ 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 ~~[the]~~ 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 [burial] plot, section, or building in the *perpetual care* cemetery.

~~[(b) Not more than 75 percent of the property's proceeds or income may be devoted to maintaining and beautifying the private block, plot, or structure for which the transfer is made.]~~

~~[(c) At least 25 percent of the property's proceeds or income must be devoted generally to maintaining and beautifying the cemetery in which the block, plot, or structure is located.]~~

SECTION 41. Section 712.041, Health and Safety Code, is amended to read as follows:

Sec. 712.041. ANNUAL STATEMENT OF FUNDS. (a) A corporation ~~[perpetual care cemetery]~~ shall file in its ~~[the cemetery's]~~ 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 ~~[fund]~~ 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* ~~[grave space sold or disposed of]~~ 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* ~~[grave space sold or disposed of]~~ 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 ~~[association]~~ president and secretary, or two principal officers, shall verify the information on the statement.

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

(d) ~~A [Not later than the 30th day after the date on which the statement is filed with the commissioner, a] copy of the statement shall be available to the public upon request [published in at least one newspaper of general circulation in the county in which the cemetery is located].~~

SECTION 42. Section 712.042, Health and Safety Code, is amended to read as follows:

Sec. 712.042. FEES. (a) On filing a [the] statement of funds under Section 712.041, a corporation [the cemetery] shall pay the commissioner a reasonable and necessary fee set annually by the commissioner to defray the cost of administering this chapter.:

- ~~[(1) \$100, if the cemetery serves a municipality with a population of 25,000 or less; or~~
- ~~[(2) \$200, if the cemetery serves a municipality with a population of more than 25,000.]~~

(b) The banking department shall receive and disburse revenues collected under this chapter in accordance with Article 12, Chapter I, The Texas Banking Code of 1943 (Article 342-112, Vernon's Texas Civil Statutes), ~~for:~~

- ~~[(1) the administration and enforcement of the law relating to the operation of funds; and~~
- ~~[(2) investigations on department initiative, or on complaints made by others, regarding the operation of a perpetual care cemetery and the creation, investment, and expenditure of funds.~~

~~[(c) A reasonable part of the amount that the banking department transfers each year of the biennium to the general revenue fund to cover the cost of government services rendered by other departments may consist of revenues collected under this chapter].~~

SECTION 43. Section 712.043, Health and Safety Code, is amended to read as follows:

Sec. 712.043. ADDITIONAL FUND REPORT. The commissioner may require, as often as the commissioner determines necessary, the trustee of a corporation's fund [a trustee] 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 [assets];
- (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) ~~[a statement that none of the fund assets are loans to the cemetery for which the fund is established or to an officer or director of the cemetery; and~~
- ~~[(10)] any other information the commissioner determines is pertinent.~~

SECTION 44. Section 712.044, Health and Safety Code, is amended to read as follows:

Sec. 712.044. EXAMINATION [AUDIT] OF FUND RECORDS; EXAMINATION [AUDIT] FEES AND EXPENSES. (a) ~~The books and records of a corporation relating to its fund shall be examined annually or as often as necessary by the commissioner. The examination shall cover the period of time from the date of the last examination of the corporation's books and records relating to its fund [The commissioner shall examine the records of a perpetual care cemetery association annually or as often as necessary].~~

(b) A corporation [An association] that is examined under this section shall make its books and records relating to its fund available for examination by the banking department upon reasonable notice to the corporation and shall pay to the commissioner for the [regular] examination a reasonable and necessary fee set annually by the commissioner to defray the cost of administering this chapter.:

- ~~[(1) not more than \$100 a day or part of a day for each examiner or not more than a total of \$400 for the entire examination, if the associations annual deposits to the association's fund as required by law are less than \$7,500; or~~

~~(2) not more than \$200 a day or part of a day for each examiner or not more than a total of \$800 for the entire examination, if the association's annual deposit to the association's fund as required by law are \$7,500 or more.~~

~~[(e) If the examiner determines that the conditions of the association necessitate additional examination or a prolonged audit to ascertain the association's status, the association shall pay the total expense of the additional examination or audit.]~~

SECTION 45. Subchapter C, Chapter 712, Health and Safety Code, is amended by adding Section 712.0441 to read as follows:

Sec. 712.0441. ENFORCEMENT. (a) A corporation shall be subject to a civil penalty upon the occurrence of any of the following violations:

(1) the corporation does not make a deposit in its fund as required by Section 712.028;

(2) the corporation does not file a statement of funds as required by Section 712.041; or

(3) the corporation does not pay the filing fee as required by Section 712.042.

(b) The trustee of a fund shall be subject to a civil penalty upon the occurrence of either of the following violations:

(1) the trustee does not file a report required by the commissioner under Section 712.043 within 30 days after the date of the commissioner's request; or

(2) the fund does not comply with this chapter.

(c) The civil penalty that may be imposed under Subsection (a) or (b) shall not exceed \$250 per violation for each day that the violation persists, provided, that the aggregate civil penalty for all violations shall not exceed \$500 per day. A corporation or trustee shall have no civil penalty liability if within 30 days after receiving written notice from the commissioner of the violation the corporation or trustee corrects such violation by performing the required duty or act. Any such civil penalty may be imposed by the commissioner after notice and opportunity for hearing in accordance with the procedures for a contested case hearing under the Administrative Procedure and Texas Register Act. In determining the amount of the penalty, the commissioner shall consider the seriousness of the violation and the good faith of the corporation or trustee in its attempts to achieve compliance. The amount of such penalty may be collected by the commissioner in the same manner that money judgments are enforced in the district courts of this state.

(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) The commissioner may issue an order to cease and desist if a violation described in Subsection (a) has not been corrected within 30 days after the receipt by the corporation of written notice from the commissioner of the violation. Any order proposed under this subsection shall be served upon the corporation, shall state the grounds for the proposed order with reasonable certainty, and shall state the proposed effective date, which shall not be less than 15 days after receipt by the corporation. Unless the corporation shall request a hearing within 15 days after such receipt, the order shall become effective as proposed. If the corporation requests a hearing, it shall be conducted in accordance with the procedures for a contested case hearing under the Administrative Procedure and Texas Register Act.

(f) The commissioner may issue an order requiring restitution by a corporation to its fund if, after notice and opportunity for hearing held in accordance with the procedures for a contested case hearing under the Administrative Procedure and Texas Register Act, the commissioner finds that the corporation has not made a deposit in the fund as required by Section 712.028.

(g) If a violation described in Subsection (a) has not been corrected with 90 days after the receipt of written notice by the corporation 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 the district court of any county in which its 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 Articles 342-1104 and 342-1105 of The Texas Banking Code.

SECTION 46. Section 712.048, Health and Safety Code, is amended to read as follows:

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[:

[1] sells, offers to sell, or advertises for sale *an interment right in a plot* [~~or the exclusive right of sepulture in a plot~~] and, before a fund is established for the cemetery in which the plot is located as provided by this chapter [subtitle], 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;*

~~[(2) violates Section 712.041;~~

~~[(3) invests funds in violation of Section 712.027; or~~

~~[(4) does not post notice as required by Section 712.007.~~

~~[(b) An offense under this section is a misdemeanor punishable by:~~

~~[(1) a fine not to exceed \$500; or~~

~~[(2) if the defendant is an individual, by a fine not to exceed \$500, confinement in the county jail for a term not to exceed six months, or both].~~

SECTION 47. Section 713.001, Health and Safety Code, is amended to read as follows:

Sec. 713.001. MUNICIPAL CEMETERY AUTHORIZED. The governing body of a [Type A general law] municipality may:

(1) purchase, establish, and regulate a cemetery; and

(2) enclose and improve a cemetery owned by the municipality.

SECTION 48. Sections 711.005, 712.006, 712.045, 712.046, and 712.047, Health and Safety Code, are repealed.

SECTION 49. This Act takes effect September 1, 1993, except for Section 712.007, which becomes effective March 1, 1994.

SECTION 50. The importance of this legislation and the crowded condition of the calendars in both houses create an emergency and an imperative public necessity that the constitutional rule requiring bills to be read on three several days in each house be suspended, and this rule is hereby suspended.

Passed by the House on May 7, 1993, by a non-record vote; passed by the Senate on May 24, 1993: Yeas 31, Nays 0.

Approved June 12, 1993.

Effective Sept. 1, 1993, except Health & Safety Code § 712.007 eff. Mar. 1, 1994.