

AN ACT

relating to the regulation of cemeteries by state and local government.

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

SECTION 1. Section 711.001, Health and Safety Code, is amended by amending Subdivisions (2) and (14) and adding Subdivisions (2-a) and (20-a) to read as follows:

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

(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.

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

SECTION 2. Sections 711.004(c) and (h), Health and Safety Code, are amended to read as follows:

(c) If the consent required by Subsection (a) cannot be obtained, the remains may be removed by permission of a district ~~[the county]~~ court of the county in which the cemetery is located.

1 Before the date of application to the court for permission to remove  
2 remains under this subsection, notice must be given to:

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

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

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

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

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

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

20 SECTION 3. Section 711.007, Health and Safety Code, is  
21 amended by amending Subsection (a) and adding Subsections (e) and  
22 (f) to read as follows:

23 (a) A district court of the county in which a cemetery is  
24 located may, by order, abate the cemetery as a nuisance and enjoin  
25 its continuance if the cemetery is:

26 (1) maintained, located, or used in violation of this  
27 chapter or Chapter 712; or

1 (2) neglected so that it is offensive to the  
2 inhabitants of the surrounding section.

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

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

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

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

14 SECTION 4. Section 711.008, Health and Safety Code, is  
15 amended by adding Subsection (c) to read as follows:

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

18 SECTION 5. Sections 711.010(a) and (b), Health and Safety  
19 Code, are amended to read as follows:

20 (a) The owner of property on which an unknown cemetery is  
21 discovered or on which an abandoned cemetery is located may not  
22 construct improvements on the property in a manner that would  
23 further disturb the cemetery until the human remains interred in  
24 the cemetery are removed under a written order issued by the state  
25 registrar or the state registrar's designee under Section  
26 711.004(f) and under an order of a district court as provided by  
27 this section.

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

10 SECTION 6. Subchapter A, Chapter 711, Health and Safety  
11 Code, is amended by adding Section 711.0105 to read as follows:

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

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

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

23 SECTION 7. Section 711.011, Health and Safety Code, is  
24 amended by amending Subsection (a) and adding Subsection (c) to  
25 read as follows:

26 (a) A person who discovers an unknown or abandoned cemetery  
27 shall file notice of the cemetery with the county clerk of the

1 county in which the cemetery is located not later than the 10th day  
2 after the date of the discovery. The notice must contain a legal  
3 description of the land on which the unknown or abandoned cemetery  
4 was found and describe the approximate location of the cemetery and  
5 the evidence of the cemetery that was discovered.

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

10 SECTION 8. Section 711.012, Health and Safety Code, is  
11 amended to read as follows:

12 Sec. 711.012. RULES. (a) The Finance Commission of Texas  
13 may adopt rules to enforce and administer Sections 711.003,  
14 711.004, 711.007, 711.008, 711.0105, 711.021-711.024,  
15 711.032-711.036 [~~711.032-711.035~~], 711.038, 711.040-711.042,  
16 711.052, 711.061, and 711.062 relating to perpetual care  
17 cemeteries.

18 (b) The Texas Funeral Service Commission may adopt rules,  
19 establish procedures, and prescribe forms to enforce and administer  
20 Sections 711.003, 711.008, 711.0105, 711.021-711.034 [~~711.010,~~  
21 ~~711.011, 711.021-711.035~~], 711.038, 711.041, 711.042, 711.061, and  
22 711.062 relating to cemeteries that are not perpetual care  
23 cemeteries.

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

25 (1) enforce and administer Sections 711.010 and  
26 711.011; and

27 (2) enforce and administer Sections 711.004, 711.007,

1 711.0105, 711.035, and 711.036 relating to cemeteries that are not  
2 perpetual care cemeteries.

3 SECTION 9. Section 711.035, Health and Safety Code, is  
4 amended by amending Subsection (d) and adding Subsection (g) to  
5 read as follows:

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

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

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

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

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

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

22 SECTION 10. Section 711.036, Health and Safety Code, is  
23 amended by amending Subsection (b) and adding Subsection (c) to  
24 read as follows:

25 (b) An owner of land adjacent to a cemetery for which a  
26 cemetery organization or other governing body does not exist may  
27 petition a district court of the county in which the cemetery is

1 located to remove any human remains and the dedication for all or  
2 any portion of the cemetery. In addition to the notice required by  
3 Section 711.004, notice of a petition filed under this subsection  
4 must be given to the Texas Historical Commission and to the county  
5 historical commission of the county in which the cemetery is  
6 located. The Texas Historical Commission and the county historical  
7 commission may intervene and become parties to the suit. Unknown  
8 next of kin of deceased persons buried in the cemetery shall be  
9 served by publication of a notice in a newspaper of general  
10 circulation in the county in which the cemetery is located, or if  
11 there is not a newspaper of general circulation in the county, in a  
12 newspaper of general circulation in an adjacent county. A  
13 reasonable good faith effort shall be made to remove all remains and  
14 monuments from the cemetery or that portion of the cemetery for  
15 which the dedication is to be removed.

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

19 SECTION 11. Subchapter D, Chapter 711, Health and Safety  
20 Code, is amended by adding Section 711.0515 to read as follows:

21 Sec. 711.0515. ENFORCEMENT BY ATTORNEY GENERAL; RULE OR  
22 ORDER OF TEXAS FUNERAL SERVICE COMMISSION. On request of the Texas  
23 Funeral Service Commission, the attorney general may seek to  
24 enforce by injunction any rule or order adopted by the commission  
25 under this chapter.

26 SECTION 12. Sections 713.009(b), (c), (d), and (e), Health  
27 and Safety Code, are amended to read as follows:

1 (b) If a municipality does not take possession and control  
2 of a cemetery under Subsection (a) or acts to take possession and  
3 control but does not perform the work required by Subsections (d),  
4 (e), and (f), a district court on petition of a resident of the  
5 county in which the cemetery is located shall by order appoint a  
6 willing nonprofit corporation organized under the Texas Non-Profit  
7 Corporation Act (Article 1396-1.01 et seq., Vernon's Texas Civil  
8 Statutes) to act in place of the municipality to protect the public  
9 health, safety, comfort, and welfare. The district court and the  
10 nonprofit corporation must comply with the requirements of Chapter  
11 715 in assuming responsibility for the cemetery.

12 (c) In accordance with Chapter 715, a [A] district court  
13 appointing a nonprofit corporation has continuing jurisdiction to  
14 monitor and review the corporation's operation of the cemetery.  
15 The court may, on its own motion, revoke the appointment and appoint  
16 another willing nonprofit corporation without the necessity of  
17 another petition. The court shall review the subsequent  
18 appointment if a county resident petitions for review of the  
19 appointment.

20 (d) A resolution of the municipality or an order of the  
21 court under this section must specify that, not later than the 60th  
22 day after the date of giving notice of a declaration of intent to  
23 take possession and control, the municipality or corporation, as  
24 appropriate, shall present a plan to:

25 (1) remove or repair any fences, walls, or other  
26 improvements;

27 (2) straighten and reset any memorial stones or

1 embellishments that are a threat or danger to public health,  
2 safety, comfort, or welfare; and

3 (3) take proper steps to restore and maintain the  
4 premises in an orderly and decent condition.

5 (e) The notice must be given by mail to all persons shown by  
6 the records in the county clerk's office to have an interest in the  
7 cemetery, to the Texas Historical Commission, and to all interested  
8 persons by publication in a newspaper of general circulation in the  
9 municipality.

10 SECTION 13. Section 713.010, Health and Safety Code, is  
11 amended to read as follows:

12 Sec. 713.010. PRIVATE CARE OF GRAVES. This subchapter does  
13 not affect the right of a person who has an interest in a grave or  
14 burial lot, or who is related within the fifth ~~third~~ degree by  
15 affinity or consanguinity, as determined under Chapter 573,  
16 Government Code, to, or is a direct descendant of, a decedent  
17 interred in the cemetery, to beautify or maintain a grave or burial  
18 lot individually or at the person's own expense in accordance with  
19 reasonable municipal rules.

20 SECTION 14. Subchapter A, Chapter 713, Health and Safety  
21 Code, is amended by adding Section 713.011 to read as follows:

22 Sec. 713.011. MAINTENANCE OF MUNICIPAL CEMETERIES. (a) A  
23 municipality that operates or has jurisdiction over a public  
24 cemetery shall maintain the cemetery in a condition that does not  
25 endanger the public health, safety, comfort, or welfare.

26 (b) A municipality's responsibility to maintain a cemetery  
27 under this section includes:

- 1           (1) repairing and maintaining any fences, walls,  
2 buildings, roads, or other improvements;
- 3           (2) leveling or straightening markers or memorials;
- 4           (3) properly maintaining lawns, shrubbery, and other  
5 plants;
- 6           (4) removing debris, including dead flowers and  
7 deteriorated plastic ornaments; and
- 8           (5) promptly restoring gravesites following an  
9 interment.

10           SECTION 15. Section 713.025, Health and Safety Code, is  
11 amended to read as follows:

12           Sec. 713.025. PRIVATE CARE OF GRAVES. This subchapter does  
13 not affect the right of a person to maintain a grave or burial lot in  
14 a cemetery if the person:

- 15           (1) has an interest in the grave or burial lot; or
- 16           (2) is related within the fifth [~~third~~] degree by  
17 affinity or consanguinity, as determined under Chapter 573,  
18 Government Code, to, or is a direct descendant of, a decedent  
19 interred in a cemetery maintained by a trustee under this  
20 subchapter.

21           SECTION 16. Section 715.005(a), Health and Safety Code, is  
22 amended to read as follows:

23           (a) The written plan accompanying the nonprofit  
24 corporation's petition must include:

- 25           (1) a description of the actions to be taken by the  
26 nonprofit corporation to restore, operate, and maintain the  
27 historic cemetery, which must include:

1 (A) repair of any fences;

2 (B) straightening, leveling, and resetting of  
3 memorials or embellishments in the cemetery that are a threat or  
4 danger to the public health, safety, comfort, or welfare; ~~and~~

5 (C) taking proper steps to restore and  
6 continuously operate and maintain the cemetery in an orderly and  
7 decent fashion that does not endanger the public health, safety,  
8 comfort, or welfare;

9 (D) restoration of damaged memorials; and

10 (E) restoration and maintenance of cemetery  
11 elements as defined by Section 711.001;

12 (2) the anticipated costs of the actions described  
13 under Subdivision (1);

14 (3) the time that the actions described by Subdivision  
15 (1) will be commenced and the time that it is anticipated the  
16 actions will be completed;

17 (4) a description of the actions to be taken by the  
18 nonprofit corporation for the proper conduct of its business and  
19 for the protection of the cemetery and the principles, plans, and  
20 ideals on which the cemetery was established;

21 (5) the percentage of the total purchase price of each  
22 plot in the cemetery sold and conveyed by the nonprofit corporation  
23 to be deposited in the trust fund established under Section  
24 715.011, which must be at least 10 percent of the total purchase  
25 price of the plot; and

26 (6) a description of the records to be maintained by  
27 the nonprofit corporation, including records regarding:

- 1                   (A) the sale of plots in the cemetery;
- 2                   (B) the interments in the cemetery;
- 3                   (C) the total purchase price received from the
- 4 sale of each plot in the cemetery;
- 5                   (D) the percentage of the total purchase price of
- 6 each plot in the cemetery deposited in the trust fund established
- 7 under Section 715.011; and
- 8                   (E) the income received by the nonprofit
- 9 corporation from the trust fund established under Section 715.011
- 10 and the manner in which the income is used by the nonprofit
- 11 corporation for the maintenance and care of the cemetery.

12           SECTION 17. This Act takes effect September 1, 2009.

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President of the Senate

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Speaker of the House

I certify that H.B. No. 2927 was passed by the House on May 5, 2009, by the following vote: Yeas 142, Nays 0, 1 present, not voting.

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Chief Clerk of the House

I certify that H.B. No. 2927 was passed by the Senate on May 21, 2009, by the following vote: Yeas 31, Nays 0.

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Secretary of the Senate

APPROVED: \_\_\_\_\_

Date

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Governor