

SUBJECT: Use of certain terms by cemeteries

COMMITTEE: Financial Institutions — favorable, with amendment

VOTE: 7 ayes — Averitt, Solomons, Denny, Hopson, Marchant, Menendez, Wise
0 nays
2 absent — Grusendorf, Pitts

WITNESSES: For — Hank Carroll, Texas Cemeteries Association
Against — None

BACKGROUND: Health and Safety Code, sec. 711.021, provides that any cemetery that began its initial operations on or after September 1, 1993, shall be operated as a perpetual care cemetery in accordance with Chapter 712, which sets forth guidelines for perpetual care cemeteries in Texas.

Health and Safety Code, sec. 711.001 defines “perpetual care” or “endowment care” as the maintenance, repair, and care of all places in the cemetery. A “perpetual care cemetery” or “endowment care cemetery” is defined as a cemetery for the benefit of which a perpetual care trust fund is established as provided by Chapter 712 of the Health and Safety Code.

The Texas Department of Banking through its Perpetual Care Cemetery Program has oversight authority of perpetual care cemetery funds to ensure their compliance with the Health and Safety Code. There are approximately 227 licensed perpetual care cemeteries in Texas. In addition, the department has enforcement and regulatory authority and may pursue and impose penalties on unlicensed operators of perpetual care cemeteries.

Health and Safety code, secs. 712.0441 and 712.048 establish the civil and criminal penalties that cemetery corporations are subject to for failure to comply with the provisions regarding perpetual care cemeteries set forth in Chapter 712 of the Health and Safety Code.

DIGEST: HB 1460, as amended, would amend Health and Safety Code, sec. 711.021, to prohibit a cemetery corporation that does not operate as a perpetual care cemetery in accordance with Health and Safety Code, ch. 712 from using the words “perpetual care” or “endowment care”, or any other term that suggests “perpetual care” or “endowment care” standards, in the cemetery’s name or in any advertising relating to the cemetery.

HB 1460 would take effect September 1, 2001. Any cemetery corporations not in compliance with the changes to the law made by HB 1460 on the effective date would be required to amend their articles of incorporation to comply with the changes to the law by no later than December 31, 2002.

SUPPORTERS SAY: HB 1460 would benefit consumers and the public by ensuring that cemeteries using the words “perpetual care” or “endowment care” in their names or advertising truly are perpetual care cemeteries, are subject to regulation by the Department of Banking, and are in compliance with the provisions set forth in Health and Safety Code, ch. 712. Under the current law, certain cemeteries with insufficient endowment funds — or even no endowment funds at all — can use the terms “perpetual” or “endowment” in a manner that is misleading and confusing to the general public.

HB 1460 would be limited in scope and would focus on evaluating the extent of and eliminating such deceptive and misleading practices by cemeteries rather than providing penalties. After determining how well the bill addressed the problem, the Legislature could decide whether to set forth any explicit penalty provisions or enforcement mechanism.

OPPONENTS SAY: HB 1460 would not go far enough to address misleading and deceptive behavior by certain cemetery corporations. Although HB 1460 would prohibit cemetery corporations that do not operate as perpetual care cemeteries from using the words “perpetual care” or “endowment care” in their names or advertising, it would not provide an explicit enforcement mechanism or penalty provisions to ensure compliance with the law.