

- SUBJECT:** Requiring cemetery plot brokers to register with banking department
- COMMITTEE:** Investments and Financial Services — committee substitute recommended
- VOTE:** 7 ayes — Villarreal, Flynn, Anderson, Burkett, Laubenberg, Longoria, Phillips
0 nays
- WITNESSES:** For — Russell Allen and Arlie Davenport, Texas Cemeteries Association;
(*Registered, but did not testify:* Jim Bates, Funeral Consumers Alliance of Texas)
Against — Joan Muser, Lots for Less, Inc.
On — Stephanie Newberg, Texas Department of Banking
- BACKGROUND:** Finance Code, sec. 11.307 requires the Texas Department of Banking to direct the entities it regulates to provide notification to consumers regarding how to file a complaint.
- DIGEST:** CSHB 52 would require someone who sold the exclusive right of sepulture (right of burial in a cemetery plot) to register with the Texas Department of Banking as a cemetery broker. “Cemetery broker” would mean a person who sold the right of burial in a cemetery plot to another person. The term would not apply to a person who was an officer, agent, or employee of the cemetery organization in which the plot was located or who originally purchased the burial plot right for personal use.
- Registration process.** Cemetery brokers would have to file a notarized one-time, revocable registration with the banking commissioner with the broker’s contact information, contact information for a written complaint, and an e-mail address. The broker would have to update the registration information within 60 days of any change. The department could charge a registration fee that would not exceed \$100 per year.
- Exemptions from registering as a cemetery broker.** A member or affiliate of a cemetery organization acting under the direction of the cemetery organization or an employee of a registered cemetery broker

would not have to register. Others exempt would include a person named in the certificate of ownership or conveyance for the plot with the cemetery, a spouse or heir, an executor, administrator, or guardian of a grantee, and an attorney or a durable power of attorney for a grantee who was not otherwise engaged in the business of a cemetery broker.

Sale or resale requirements. The bill would require the resale of a right of burial in a cemetery plot to comply with the rules of the cemetery organization and any restrictions in the certificate of ownership, quitclaim agreement, or other instrument of conveyance. It would have to be in a form authorized by or acceptable to the cemetery organization and signed by the grantee named in the certificate of ownership, the designated purchaser or transferee, and each cemetery broker involved in the transfer of the right of burial. The instrument of conveyance would have to be filed and recorded with the cemetery organization by the third business day after the sale. A cemetery organization would have to provide its rules, conveyance forms, and written guidelines requested by a cemetery broker. A cemetery broker could not divide and resell a collective right of burial without the permission of the cemetery organization. A cemetery broker would be required to collect any fee required by law and the cemetery organization and remit it to the cemetery organization. A cemetery organization could not charge a fee for the resale of a right of burial that exceeded the fee that the cemetery organization charged on the sale of a right of burial.

Record keeping requirements. CSHB 52 would require a cemetery broker to keep a record of each sale or resale that included the name and address of the purchaser, purchase date, and a copy of the purchase agreement including: the name and address of the cemetery, description of burial rights, purchase price, amount of fees collected and remitted, and detailed information on the disposal of the purchase agreement.

Record examination. Cemetery brokers must keep reliable and retrievable electronic records. The department would examine the records of a cemetery broker that the commissioner determined was necessary to safeguard the interests of purchasers and beneficiaries of the right to burial and enforce applicable law. The commissioner would charge an examination fee sufficient to cover the cost of the examination and the salary and expenses for a department employee.

Broker requirements. A cemetery broker would be required to provide

information to consumers on how to file a complaint. If the commission received a complaint against a cemetery broker, the commission would notify the cemetery broker or its representative within 31 days of the complaint. The department may require the cemetery broker to resolve the complaint or provide the department with a response to the complaint, or provide written direction requiring the cemetery broker to take specific action to resolve the complaint.

Termination of registration. A cemetery broker could revoke its registration at any time, and the commissioner could revoke the license of a cemetery broker who failed to pay the annual administration fee, refused or failed to comply with the department's written request to respond to a complaint, or if the commissioner determined that the cemetery broker engaged in conduct that violated federal or state law or was found to be dishonest or fraudulent. The commissioner would be required to provide the reason for revoking a cemetery broker's license, and the cemetery broker could appeal the decision.

Criminal activity. CSHB 52 would make it a class A misdemeanor (up to one year in jail and/or a maximum fine of \$4,000) to offer or receive payment to solicit business for a cemetery broker, fail to keep records of sales or resales or to collect and remit required fees for the sale or resales of the right of burial, or fail to register as cemetery broker if engaged in that business. The bill would allow the commissioner to cancel or not renew a cemetery broker's registration if a hearing established a pattern of willful disregard for laws governing Texas cemeteries.

Emergency orders. The commissioner could issue an immediate emergency order if irreparable harm to the public or a beneficiary under the sale of a right of burial were discovered. The emergency order would remain in effect unless stayed by the commissioner. If the person named in the order requested that the emergency order be stayed, the commissioner would have to set a hearing within 22 days to determine the validity of the findings supporting the immediate effect of the order. The commissioner could order restitution if, after the hearing, the commissioner determined that the person failed to remit a fee for the sale of the right of burial in a cemetery plot or withheld money that belongs to a cemetery organization.

The commissioner could seize the accounts in which funds from the sold right of burial were held with credible evidence that a person failed to properly remit the fee, withheld money that belongs to a cemetery

organization, refused to submit to department examination, was subject to registration cancellation, or had not registered as a cemetery broker.

Nonemergency orders. A nonemergency order would take effect as the commissioner proposed unless the person named in the order requested a hearing within 15 days after the order was mailed. The commissioner could initiate an administrative claim for costs incurred in the administration or transfer of the seized assets and records and costs related to the administration and performance of an instrument of conveyance related to the sale by the person named in the order. The commissioner could seek additional remedy to enforce penalties for other violations.

Authorizing administration fees. CSHB 52 would allow the finance commission to adopt fees associated with the enforcement and administration of the provisions relating to cemetery brokers, the retention and inspection of records relating to the sale or resale of burial plot rights, and changes in management or control of a cemetery broker's business.

**SUPPORTERS
SAY:**

CSHB 52 would reduce fraud and protect consumers from problems that result from unrecorded sales of burial plots in cemeteries. Many people pre-purchase the right to be buried in a cemetery plot or sell the right to be buried in a plot that they do not intend to use. Often a third-party broker assists with the transaction. There has been a recent increase in online cemetery plot sales that have sold the same right of burial more than once.

There have been instances in which a family bought a right of a burial plot through a broker and later found that the plot was still listed with the cemetery as belonging to the original owner. This mistake could have resulted from a broker's failure, whether fraudulent or negligent, to notify the cemetery of the sale, fill out the proper conveyance paperwork, and submit the appropriate fees to change the certificate of ownership. The bill would reduce this unfortunate and difficult-to-resolve scenario affecting consumers by simply allowing the banking commissioner to require registration and take action against a broker who did not follow proper procedure.

**OPPONENTS
SAY:**

CSHB 52 would place burdensome regulations on right of burial brokers, would not fix the problem it intends to address, could reduce competition, and would criminalize common industry referral practices.

The bill would require responsible small businesses to comply with

burdensome new regulations because of apparent, but undocumented, problems caused by online brokers. The bill would exempt attorneys and executors who could also fail to turn in paperwork to transfer the right of burial, which would cause the ownership discrepancy the bill intends to prevent. Small brokers have been operating responsibly for many years, and CSHB 52 would create unnecessary regulations for something that is not really a problem.

Many cemetery brokers are community residents who could exit the business if forced to comply with new registration requirements and regulations. Fewer brokers could mean less competition and higher prices for people who need to buy a right of burial plot in a cemetery.

CSHB 52 should not make it a crime for an individual to receive a payment to solicit business for a cemetery broker. The bill would criminalize the common industry practice of offering a small token of appreciation for a referral by a friend or former client to a trusted broker who has served someone well in the past.

NOTES:

The committee substitute differs from the bill as filed in that it includes exemptions from registering as a cemetery broker for a surviving spouse or heirs-at-law of the owner of the right of a burial plot in a cemetery.