

- SUBJECT:** Clarifying codes on the disposition and removal of a decedent's remains
- COMMITTEE:** Judiciary and Civil Jurisprudence — favorable, without amendment
- VOTE:** 9 ayes — Leach, Farrar, Y. Davis, Julie Johnson, Krause, Meyer, Neave, Smith, White
- 0 nays
- WITNESSES:** For — Craig Hopper, State Bar of Texas Real Estate Probate and Trust Law Section; (*Registered, but did not testify*: Lauren Hunt, Glenn Karisch, William Pargaman, and Melissa Willms, State Bar of Texas Real Estate Probate and Trust Law Section; Guy Herman, Travis County Probate Court)
- Against — None
- BACKGROUND:** Health and Safety Code ch. 711 contains general provisions relating to cemeteries. Sec. 711.002 governs the disposition of a decedent's remains and lists in priority order the persons who have a right to control the disposition of the remains if the decedent did not leave written directions.
- Sec. 711.002(b) contains a form that a person can use to leave directions for the disposition of the person's remains upon the person's death. This form allows for a person to name an agent to control the remains and makes provisions for the transfer of that role in the event of a divorce.
- Sec. 711.002(k) provides that any dispute among persons listed as having a right to control the disposition of a decedent's remains concerning that right be resolved by a court of competent jurisdiction.
- Sec. 711.004 governs the removal of remains interred in a cemetery. Remains may be removed with the written consent of the cemetery organization operating the cemetery and with the written consent of certain persons, as specified in statute. If consent cannot be obtained, the remains may be removed by permission of a district court of the county in

which the cemetery is located.

Interested parties have called for the laws surrounding the disposition and removal of remains to be clarified and updated.

DIGEST: HB 2248 would make certain changes to statute concerning the disposition and removal of a decedent's remains.

The bill would amend the form included in Health and Safety Code sec. 711.002(b) to provide that if the marriage of the person who completed the form to the person's agent or successor agent was dissolved by divorce, annulled, or declared void before the person's death, that agent or successor would no longer be the person's agent unless otherwise specified.

The bill would specify that any dispute among persons listed as having the right to control the disposition of a decedent's remains concerning their right to such control would be resolved by a court with jurisdiction over probate proceedings for the decedent, regardless of whether a probate proceeding had been initiated.

HB 2248 also would authorize a county court, rather than a district court, to give permission for a decedent's remains to be removed from a cemetery if the consent required by statute could not be obtained.

The changes in law made by the bill would apply to certain instruments for the disposition of a decedent created before, on, or after the bill's effective date. The bill would apply to judicial proceedings commenced on or after the bill's effective date or that were pending on the effective date, and to an application to a court to remove remains from a cemetery that was submitted on or after the bill's effective date.

If a court found that a provision of the bill would substantially interfere with conducting a judicial proceeding concerning an instrument for the disposition of a decedent that was pending on the effective date of the bill or would prejudice the rights of a party to the proceeding, the provision of

the bill would not apply.

The bill would apply only to the validity of a document executed on or after the effective date of the bill.

The bill would take effect September 1, 2019.