

BILL ANALYSIS

Senate Research Center
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S.B. 1402
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AUTHOR'S / SPONSOR'S STATEMENT OF INTENT

The Texas Department of Banking is tasked with overseeing perpetual care cemeteries. In recent years it has become necessary to allow more flexibility for perpetual care cemeteries. Currently, administrative law judges' hands are tied concerning the discretion they have regarding administrative penalties. S.B. 1402 gives administrative law judges the authority to recommend a penalty amount up to the statutory maximum. S.B. 1402 also requires that perpetual care cemeteries own the land where the cemetery is located.

Additionally, cemeteries have seen administrative costs related to management of the trust outweigh the growth. S.B. 1402 would allow cemeteries to pool trust funds in order to reduce trustee management fees.

As proposed, S.B. 1402 amends current law relating to the regulation of cemeteries and the administration of perpetual care trust funds.

RULEMAKING AUTHORITY

This bill does not expressly grant any additional rulemaking authority to a state officer, institution, or agency.

SECTION BY SECTION ANALYSIS

SECTION 1. Amends Section 711.056(a), Health and Safety Code, as follows:

(a) Authorizes, rather than requires, the trier of fact, if after a hearing conducted as provided by Chapter 2001 (Administrative Procedure), Government Code, the trier of fact finds that a violation of this chapter or a rule of the Finance Commission of Texas (SFC) establishes a pattern of wilful disregard for the requirements of this chapter or rules of the SFC, to recommend to the banking commissioner of Texas (commissioner) that the maximum administrative penalty permitted under Section 711.055 (Enforcement by Commissioner) be imposed on the person committing the violation or that the commissioner cancel or not renew:

- (1) the person's registration under Subchapter C-1, if the person is registered under that subchapter; or
- (2) the person's permit under Chapter 154 (Prepaid Funeral Services), Finance Code, if the person holds such a permit.

SECTION 2. Amends Section 712.0034, Health and Safety Code, by amending Subsection (b) and adding Subsection (c), as follows:

(b) Requires an applicant, to qualify for a certificate of authority under this chapter, to demonstrate to the satisfaction of the commissioner that the applicant corporation wholly owns all land on which the perpetual care cemetery will be located. Makes nonsubstantive changes.

(c) Provides that for purposes of Subsection (b)(5)(D) (relating to an applicant wholly owning all land on which the perpetual care cemetery will be located), an applicant corporation is considered to wholly own land regardless of whether the land is subject to a mortgage, deed of trust, or other lien.

SECTION 3. Amends Section 712.0037, Health and Safety Code, by adding Subsections (a-1) and (a-2), as follows:

(a-1) Provides that, notwithstanding Subsection (a), a certificate holder holding a certificate of authority issued before September 1, 2017, that does not on that date satisfy the ownership requirement under 712.0034(b)(5)(D) is not required to satisfy that ownership requirement as a condition of renewal until September 1, 2022. Authorizes the commissioner to extend the period of compliance for the ownership requirement if the certificate holder files a written application for the extension in the form and manner required by the Texas Department of Banking, and shows good cause for the extension.

(a-2) Provides that this subsection and Subsection (a-1) expire September 1, 2028.

SECTION 4. Amends Section 712.021, Health and Safety Code, by amending Subsections (a) and (g) and adding Subsection (h), as follows:

(a) Requires a corporation that operates a perpetual care cemetery in this state, except as provided by Subsection (h), to have a fund established with a trust company or a bank with trust powers that is located in this state. Prohibits a trust company or bank from having more than one director who is also a director of the corporation.

(g) Defines "master trust account." Changes references to common trust fund to master trust account.

(h) Authorizes a corporation to apply to the commissioner for temporary relief and placement of a perpetual care trust fund in a segregated interest bearing account at a Texas financial institution, as defined by Section 201.101 (Definitions), Finance Code, if the corporation has been operating a perpetual care cemetery in this state for at least two years, and has a perpetual care trust fund with a balance of less than \$100,000, the income of which is insufficient to pay trustee fees.

SECTION 5. Effective date: September 1, 2017.