

SUBJECT: Permission to move remains interred in a cemetery

COMMITTEE: Public Health — committee substitute recommended

VOTE: 9 ayes — Capelo, Laubenberg, Coleman, Dawson, McReynolds, Naishtat,  
Taylor, Truitt, Zedler

0 nays

WITNESSES: *(On original bill:)*

For — Paul Lielinski, Texas Cemetery Association; Judy Richards,  
*(Registered, but did not testify:)* Jonnie Rogers, Service Corporation  
International; Tom Smith, Public Citizen; Ann Hubener; Wayne Massey

Against — Janis Carter, Texas Funeral Directors Association

BACKGROUND: Health and Safety Code, sec. 711.004 allows removal of remains interred in a cemetery with the consent of the cemetery association operating the cemetery, the owner of the cemetery plot, and the interred individual's next of kin. If this consent cannot be obtained, removal may occur by permission of a county court of the county in which the cemetery is located. In such a case, the cemetery must give personal notice no less than 11 days before the date of application to the court for permission to remove the remains or notice by certified or registered mail no less than 16 days before the application date. Consent for the removal of remains is not required if the remains are moved from one plot to another in the same cemetery.

DIGEST: CSHB 1077 would eliminate from Health and Safety Code, sec. 711.004 the exemption for removal of remains from one plot to another in the same cemetery. The same consent needed to move remains from one cemetery to another would apply to remains moved between plots in the same cemetery. The bill also would prohibit fraudulent removal of interred remains and the resale of a plot after remains were moved from that plot.

A cemetery could move remains to another plot in the same cemetery without the otherwise required consent if the cemetery sent written notice by certified mail to the last known address of the plot's current owner. The notification

would have to include information indicating the reason for the removal and the proposed location for reinterment. If an objection to the notice was not received within 31 days after it was sent, the remains could be moved.

In the event of an emergency, such as interment of remains in the wrong plot, CSHB 1077 would allow immediate removal of remains if permission were granted by the county court. The court would have to hear an application for emergency removal of remains no later than the first business day after the application was made. Personal notice of the application would be permitted on the day the application was made.

CSHB 1077 would exempt cemeteries owned by the Veterans' Land Board.

The bill would take effect September 1, 2003, and apply only to the removal of remains on or after that date.

**SUPPORTERS  
SAY:**

CSHB 1077 would help prevent the disturbing scenario of an individual visiting a loved one's grave and being unable to locate the burial site because the interred person had been moved. Reports in recent years have highlighted the practice by some cemeteries of moving the remains of individuals without notifying the owners of the original plots. In some cases, cemeteries move remains so that the original plots can be resold for additional profit. CSHB 1077 would curb this disrespectful practice by forcing a cemetery to obtain notification by the plot's owner and the interred individual's next of kin before the individual's remains were moved.

This bill would make uniform the law governing remains moved from one cemetery to another and remains moved from one plot to another in the same cemetery, adding consistency to a statute that improperly draws a distinction between these two activities. A cemetery must obtain written consent from a plot owner if it is to move an individual's remains to a different cemetery, and there is no reason to allow an equally disruptive action to occur without consent simply because the process takes place within the same cemetery.

Through its requirement that a cemetery attempt to contact the owner of a plot and the interred individual's next of kin before removing remains, CSHB 1077 would compel Texas cemeteries to keep proper and accurate records of their operations.

This bill would provide needed safeguards to exempt cemeteries from the notification requirement when it was not feasible. Because the titles of some cemetery plots are many decades old, CSHB 1077 would allow a cemetery to move remains if no objection to the proposed action was made by the plot owner within 31 days of notification. In the rare event that an individual's remains mistakenly were interred in the wrong plot, CSHB 1077 would allow a cemetery to obtain emergency approval from a county court for the remains' removal.

**OPPONENTS  
SAY:**

CSHB 1077 would generate burdensome administrative requirements for cemeteries, the vast majority of which have no intention of committing fraud or cavalierly disrupting the remains of individuals buried in their grounds. The profit margins for cemetery plots are thin, and the requirements of HB 1077 would generate unfair new costs for this industry.

**OTHER  
OPPONENTS  
SAY:**

CSHB 1077 should be amended to exempt non-profit, religious, and state cemeteries whose resources are limited. Many of the individuals interred in these cemeteries were buried decades ago, and it would be impractical to find the owners of those plots. Further, unlike a commercial cemetery, there is no need to be concerned that a non-profit cemetery will remove a body from a plot so that the plot may be resold.

CSHB 1077 would not provide sufficient flexibility for cemeteries to remove bodies in case of an emergency. A cemetery often is unaware that a body has been improperly buried in a plot until the grounds are being prepared for a new funeral. If a body interred in the wrong plot is discovered only a few days prior to a funeral, there may not be enough time to go to a court and obtain permission to move the body. The bill should allow a cemetery to move a body in the event of an emergency, and then notify the family of the action immediately after the body has been moved.

**NOTES:**

The committee substitute differs from the bill as introduced by deleting the exemption from notification for a cemetery moving remains from one plot to another. The committee substitute added a section that would allow a cemetery to obtain court approval for the transfer of remains in an emergency situation. It also added a section that would allow a cemetery to move remains if no response to notification of a proposed removal was received within 31

days of the notification. The substitute also would exempt any cemetery owned and operated by the Veterans' Land Board.

During the 77th Legislature's 2001 regular session, Rep. J. Jones authored a similar bill, HB 1085, which died in the State, Federal, and International Relations Committee.