

**Introduced by Senator Ortiz**

February 22, 2001

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An act to amend Sections 7000, 7001, 7002, 7003, 7005, 7007, 7010, 7010.5, 7010.7, 7012, 7013, 7014, 7016, 7021, 7025, 7054.6, 7104.1, 7109, 7116, 8100, 8300, 8571, and 8650 of, to amend the heading of Chapter 1 (commencing with Section 8100) of Part 1 of Division 8 of, and to repeal Sections 7017, 7054.5, 8113.2, 8301, 8302, 8303, 8304, 8305, 8306, 8307, and 8308 of, the Health and Safety Code, relating to cemeteries.

LEGISLATIVE COUNSEL'S DIGEST

SB 542, as introduced, Ortiz. Cemeteries.

Existing law regulates the business of cemeteries and defines key terminology used in the cemetery business.

This bill would make changes to the definitions used in the cemetery business in that it clarifies, amends, and eliminates various definitions.

This bill would combine the statutes, which provided for a cemetery authority's power to regulate the use, care, control, management, restriction, and protections of the cemetery land into one statutory section and repeal other sections that duplicate the powers of the cemetery authority.

This bill would create an inalienable property right in a cemetery plot that has been conveyed by deed or certificate of ownership as a family plot and would prohibit the sale of any occupied portion of the family plot.

This bill would further allow an heir to a family plot, where human remains are contained in a portion of the family plot, to make the unoccupied portion of the plot available for sale as a property interest

and precludes the plot from becoming inalienable by virtue of operation of law.

Vote: majority. Appropriation: no. Fiscal committee: no. State-mandated local program: no.

*The people of the State of California do enact as follows:*

1 SECTION 1. Section 7000 of the Health and Safety Code is  
2 amended to read:

3 7000. The definitions in this chapter apply to this division and  
4 to ~~divisions VIII and IX of this code~~ *Division 8 (commencing with*  
5 *Section 8100).*

6 SEC. 2. Section 7001 of the Health and Safety Code is  
7 amended to read:

8 7001. “Human remains” or “remains” means the body *or a*  
9 *part of the body* of a deceased person, ~~and includes the body in any~~  
10 *regardless of its stage of decomposition and, and* cremated  
11 remains.

12 SEC. 3. Section 7002 of the Health and Safety Code is  
13 amended to read:

14 7002. “Cremated remains” means ~~human remains the~~  
15 *material that is left after cremation in a crematory of a body or a*  
16 *part of a body of a deceased person.*

17 SEC. 4. Section 7003 of the Health and Safety Code is  
18 amended to read:

19 7003. ~~“Cemetery”~~ (a) A “cemetery” means ~~any one, or a~~  
20 ~~combination of more than one, of the following, in both~~ a place  
21 used, or intended to be used, and dedicated, for cemetery purposes,  
22 *and is limited to any one, or a combination of more than one, of*  
23 *the following:*

24 ~~(a)~~

25 (1) A burial park, for earth interments.

26 ~~(b)~~

27 (2) A mausoleum, for crypt or vault interments.

28 ~~(c)~~

29 (3) A crematory, or a crematory and columbarium, for cinerary  
30 interments.

31 (b) *A place where six or more human bodies are buried.*

32 SEC. 5. Section 7005 of the Health and Safety Code is  
33 amended to read:



1 7005. Except in Part 5 (*commencing with Section 9501*) of  
2 Division ~~VIII of this code~~ 8, “mausoleum” means a structure or  
3 building for the entombment of human remains in crypts or vaults  
4 in a place used, or intended to be used, and dedicated, for cemetery  
5 purposes.

6 SEC. 6. Section 7007 of the Health and Safety Code is  
7 amended to read:

8 7007. Except in Part 5 (*commencing with Section 9501*) of  
9 Division ~~VIII of this code~~ 8, “columbarium” means a structure,  
10 room, or other space in a building or structure containing niches  
11 for inurnment of cremated human remains in a place used, or  
12 intended to be used, and dedicated, for cemetery purposes.

13 SEC. 7. Section 7010 of the Health and Safety Code is  
14 amended to read:

15 7010. “Cremation” means the ~~combination of all of the~~  
16 ~~following~~ *process by which the following three steps are taken:*

17 (a) The reduction of the body of a deceased human to its  
18 essential elements by incineration.

19 (b) The repositioning or ~~movement~~ *moving* of the body or  
20 remains during incineration to facilitate the process.

21 (c) The processing of the remains after removal from the  
22 cremation chamber *pursuant to Section 7010.3.*

23 SEC. 8. Section 7010.5 of the Health and Safety Code is  
24 amended to read:

25 7010.5. “Residue” means human ashes, bone fragments,  
26 prostheses, and disintegrated material from the chamber itself,  
27 imbedded in cracks and uneven spaces of a cremation chamber,  
28 that cannot be removed through reasonable manual contact with  
29 sweeping or scraping equipment. Material left in the cremation  
30 chamber, after the completion of a cremation, that can be  
31 reasonably removed shall *not* be considered ~~to be in excess of~~  
32 “residue.”

33 SEC. 9. Section 7010.7 of the Health and Safety Code is  
34 amended to read:

35 7010.7. “Scattering” means the authorized dispersal of  
36 cremated remains at sea, in other areas of the state, or commingling  
37 in a defined area within a dedicated cemetery, in accordance with  
38 ~~this chapter~~ *part.*

39 SEC. 10. Section 7012 of the Health and Safety Code is  
40 amended to read:



1 7012. “Entombment” means the ~~placement of~~ *process of*  
2 *placing* human remains in a crypt or vault.

3 SEC. 11. Section 7013 of the Health and Safety Code is  
4 amended to read:

5 7013. “Burial” means the ~~placement of~~ *process of placing*  
6 human remains in a grave.

7 SEC. 12. Section 7014 of the Health and Safety Code is  
8 amended to read:

9 7014. “Grave” means a space of ~~ground~~ *earth* in a burial  
10 park, used, ~~or intended to be used,~~ for ~~burial~~ *the permanent*  
11 *disposition of human remains.*

12 SEC. 13. Section 7016 of the Health and Safety Code is  
13 amended to read:

14 7016. “Niche” means a space in a columbarium used, or  
15 intended to be used, for ~~interment~~ *the placement* of cremated  
16 human remains.

17 SEC. 14. Section 7017 of the Health and Safety Code is  
18 repealed.

19 ~~7017. “Temporary receiving vault” means a vault used or~~  
20 ~~intended to be used for the temporary placement of human~~  
21 ~~remains.~~

22 SEC. 15. Section 7021 of the Health and Safety Code is  
23 amended to read:

24 7021. “Directors” or “governing body” means the board of  
25 directors, board of trustees, or other ~~governing~~ *policymaking* body  
26 of a cemetery association.

27 SEC. 16. Section 7025 of the Health and Safety Code is  
28 amended to read:

29 7025. “Disposition” means the ~~interment of~~ *final*  
30 *arrangements made for* human remains within California, or the  
31 shipment outside of California, for lawful ~~interment~~ *final*  
32 *arrangements* or scattering elsewhere, including release of  
33 remains pursuant to Section 103060.

34 SEC. 17. Section 7054.5 of the Health and Safety Code is  
35 repealed.

36 ~~7054.5. Notwithstanding the provisions of Section 7054,~~  
37 ~~cremated remains may be buried at sea as provided in Section 7117~~  
38 ~~of this code.~~

39 SEC. 18. Section 7054.6 of the Health and Safety Code is  
40 amended to read:



1 7054.6. (a) Cremated remains may be removed in a durable  
2 container from the place of cremation or interment and kept in the  
3 dwelling owned or occupied by the person having the right to  
4 control disposition of the remains under Section 7100, or the  
5 durable container holding the cremated remains may be kept in a  
6 church or religious shrine, if written permission of the church or  
7 religious shrine is obtained and there is no conflict with local use  
8 permit requirements or zoning laws, if the removal is under the  
9 authority of a permit for disposition granted under Section  
10 103060. The placement, in any place, of six or more cremated  
11 remains under this section does not constitute the place a cemetery,  
12 as defined in Section ~~8100~~ 7003.

13 (b) Prior to disposition of cremated remains, every licensee or  
14 registrant pursuant to Chapter 12 (commencing with Section  
15 7600) or Chapter 19 (commencing with Section 9600) of Division  
16 3 of the Business and Professions Code, and the agents and  
17 employees of the licensee or registrant, shall do all of the  
18 following:

19 (1) Remove the cremated remains from the place of cremation  
20 in a durable container.

21 (2) Keep the cremated remains in a durable container.

22 (3) Store the cremated remains in a place free from exposure to  
23 the elements.

24 (4) Responsibly maintain the cremated remains.

25 SEC. 19. Section 7104.1 of the Health and Safety Code is  
26 amended to read:

27 7104.1. If, within 30 days after the coroner notifies or  
28 diligently attempts to notify the person responsible for the  
29 interment ~~or inurnment~~ of a decedent's remains which are in the  
30 possession of the coroner, the person fails, refuses, or neglects to  
31 inter the remains, the coroner may inter the remains. The coroner  
32 may recover any expenses of the interment from the responsible  
33 person.

34 SEC. 20. Section 7109 of the Health and Safety Code is  
35 amended to read:

36 7109. The court shall allow costs and reasonable attorney's  
37 fees *to a prevailing plaintiff* against all defendants, other than the  
38 coroner.

39 SEC. 21. Section 7116 of the Health and Safety Code is  
40 amended to read:



1 7116. Cremated remains may be scattered or placed in areas  
 2 where no local prohibition exists, provided that the cremated  
 3 remains are not distinguishable to the public, are not in a container,  
 4 and that the person who has control over disposition of the  
 5 cremated remains has obtained written permission of the property  
 6 owner or governing agency to scatter on the property. A state or  
 7 local agency may adopt an ordinance, regulation, or policy, as  
 8 appropriate, authorizing, consistent with this section, or  
 9 specifically prohibiting, the scattering of cremated human remains  
 10 on lands under the agency's jurisdiction. The placement or  
 11 scattering of the cremated remains of more than one person in one  
 12 location pursuant to this section shall not create a cemetery  
 13 pursuant to Section 7003, ~~Section 8100~~, or any other provision of  
 14 law.

15 SEC. 22. The heading of Chapter 1 (commencing with  
 16 Section 8100) of Part 1 of Division 8 of the Health and Safety Code  
 17 is amended to read:

18

19 CHAPTER 1. ~~CEMETERY DEFINED~~ DEFINITIONS

20

21 SEC. 23. Section 8100 of the Health and Safety Code is  
 22 amended to read:

23 8100. ~~Six or more human bodies being buried at one place~~  
 24 ~~constitute the place a cemetery~~ *The definitions set forth in Chapter*  
 25 *1 (commencing with Section 7000) of Part 1 of Division 7 shall be*  
 26 *applicable to this division.*

27 SEC. 24. Section 8113.2 of the Health and Safety Code is  
 28 repealed.

29 ~~8113.2. The definitions set forth in Chapter 1 (commencing~~  
 30 ~~with Section 7000) of Part 1 of Division 7 shall be applicable to~~  
 31 ~~this chapter.~~

32 SEC. 25. Section 8300 of the Health and Safety Code is  
 33 amended to read:

34 8300. (a) A cemetery authority may make, adopt, amend,  
 35 add to, revise, or modify, and enforce rules and regulations for the  
 36 use, care, control, management, restriction and protection of all or  
 37 any part of its cemetery and for the other purposes specified in this  
 38 article.

39 (b) *The cemetery authority's power includes, but is not limited*  
 40 *to, the following:*



1 (1) Restricting and limiting the use of all property within its  
2 cemetery.

3 (2) Regulating the uniformity, class, and kind of all markers,  
4 monuments, and other structures within the cemetery and its  
5 subdivisions, but shall not require, as a condition to the erection  
6 of a marker, monument, or other structure within the cemetery, that  
7 the marker, monument, or other structure be purchased from or  
8 through the cemetery authority.

9 (3) Prohibiting the erection of monuments, markers, or other  
10 structures in or upon any portion of the cemetery.

11 (4) Regulating or prohibiting monuments, effigies, and  
12 structures within any portion of the cemetery and provide for their  
13 removal.

14 (5) Regulating or preventing the introduction or care of plants  
15 or shrubs within the cemetery.

16 (6) Preventing interment in any part of the cemetery of human  
17 remains not entitled to interment and preventing the use of  
18 interment plots for purposes violative of its restrictions or rules  
19 and regulations.

20 (7) Regulating the conduct of persons and preventing improper  
21 assemblages in the cemetery.

22 (8) Making and enforcing rules and regulations for all other  
23 purposes deemed necessary by the cemetery authority for the  
24 proper conduct of the business of the cemetery, for the transfer of  
25 any plot or the right of interment, and the protection and  
26 safeguarding of the premises, and the principles, plans, and ideals  
27 on which the cemetery is conducted.

28 SEC. 26. Section 8301 of the Health and Safety Code is  
29 repealed.

30 ~~8301.—It may restrict and limit the use of all property within  
31 its cemetery.~~

32 SEC. 27. Section 8302 of the Health and Safety Code is  
33 repealed.

34 ~~8302.—(a) It may regulate the uniformity, class, and kind of all  
35 markers, monuments, and other structures within the cemetery and  
36 its subdivisions.~~

37 ~~(b) However, no cemetery authority shall require, as a  
38 condition to the erection of a marker, monument, or other structure  
39 within the cemetery, that the marker, monument, or other structure  
40 be purchased from or through the cemetery authority.~~



1 SEC. 28. Section 8303 of the Health and Safety Code is  
2 repealed.

3 ~~8303.—It may prohibit the erection of monuments, markers, or  
4 other structures in or upon any portion of the cemetery.~~

5 SEC. 29. Section 8304 of the Health and Safety Code is  
6 repealed.

7 ~~8304.—It may regulate or prohibit monuments, effigies, and  
8 structures within any portion of the cemetery and provide for their  
9 removal.~~

10 SEC. 30. Section 8305 of the Health and Safety Code is  
11 repealed.

12 ~~8305.—It may regulate or prevent the introduction or care of  
13 plants or shrubs within the cemetery.~~

14 SEC. 31. Section 8306 of the Health and Safety Code is  
15 repealed.

16 ~~8306.—It may prevent interment in any part of the cemetery of  
17 human remains not entitled to interment and prevent the use of  
18 interment plots for purposes violative of its restrictions or rules and  
19 regulations.~~

20 SEC. 32. Section 8307 of the Health and Safety Code is  
21 repealed.

22 ~~8307.—It may regulate the conduct of persons and prevent  
23 improper assemblages in the cemetery.~~

24 SEC. 33. Section 8308 of the Health and Safety Code is  
25 repealed.

26 ~~8308.—It may make and enforce rules and regulations for all  
27 other purposes deemed necessary by the cemetery authority for the  
28 proper conduct of the business of the cemetery, for the transfer of  
29 any plot or the right of interment and the protection and  
30 safeguarding of the premises, and the principles, plans, and ideals  
31 on which the cemetery is conducted.~~

32 SEC. 34. Section 8571 of the Health and Safety Code is  
33 amended to read:

34 8571. (a) All plots, the use of which has been conveyed by  
35 deed or certificate of ownership as a separate plot, are indivisible  
36 except with the consent of the cemetery authority, or as provided  
37 by law.

38 (b) *A plot, the use of which has been conveyed by deed or*  
39 *certificate of ownership as a family plot, thereby becomes*  
40 *inalienable and shall be held as a family plot of the owner.*



1 SEC. 35. Section 8650 of the Health and Safety Code is  
2 amended to read:

3 8650. (a) Whenever an interment of the remains of a member  
4 or of a relative of a member of the family of the record owner or  
5 of the remains of the record owner is made in a plot transferred by  
6 deed or certificate of ownership to an individual owner and the  
7 owner dies without making disposition of the plot either in his will  
8 by a specific devise, or by a written declaration filed and recorded  
9 in the office of the cemetery authority, ~~the plot~~ any grave, crypt,  
10 vault, or niche in which remains have been interred thereby  
11 becomes inalienable and shall be held as the family plot of the  
12 owner.

13 (b) *As of January 1, 2002, an unoccupied grave, crypt, vault,*  
14 *or niche which, solely by virtue of this section, was inalienable*  
15 *shall become alienable.*

