

AMENDED IN SENATE AUGUST 16, 2012
AMENDED IN SENATE AUGUST 9, 2012
AMENDED IN SENATE AUGUST 6, 2012
AMENDED IN ASSEMBLY JANUARY 24, 2012
AMENDED IN ASSEMBLY JANUARY 4, 2012
CALIFORNIA LEGISLATURE—2011–12 REGULAR SESSION

ASSEMBLY BILL

No. 1225

**Introduced by Committee on Veterans Affairs (Cook (Chair),
Atkins, Block, Beth Gaines, V. Manuel Pérez, and Williams)**

February 18, 2011

An act to add Chapter 6 (commencing with Section 8122) to Part 1 of Division 8 of the Health and Safety Code, relating to cemeteries.

LEGISLATIVE COUNSEL'S DIGEST

AB 1225, as amended, Committee on Veterans Affairs. Cemeteries: veteran's commemorative property.

Existing law prohibits a cemetery owned and operated by a city, county, or city and county from engaging in the business of selling monuments or markers, and also prohibits the cemetery's officers and employees who manage, operate, or otherwise maintain the cemetery on a day-to-day basis from engaging in the private business of selling monuments or markers.

This bill would prohibit any person or entity from selling, trading, or transferring veteran's commemorative property, except as provided. This bill would require any person or entity, except a municipal corporation, as specified, that owns or controls a cemetery where

veteran’s commemorative property has been placed that wishes to sell, trade, or transfer veteran’s commemorative property to petition the superior court in the county in which the veteran’s commemorative property is located for permission to sell, trade, or transfer all or any part of the veteran’s commemorative property. The bill would establish procedures for the court to grant this permission. The bill would make the violation of its provisions a misdemeanor. By creating a new crime, the bill would impose a state-mandated local program.

The California Constitution requires the state to reimburse local agencies and school districts for certain costs mandated by the state. Statutory provisions establish procedures for making that reimbursement.

This bill would provide that no reimbursement is required by this act for a specified reason.

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

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

1 SECTION 1. Chapter 6 (commencing with Section 8122) is
2 added to Part 1 of Division 8 of the Health and Safety Code, to
3 read:

4
5 CHAPTER 6. VETERAN’S COMMEMORATIVE PROPERTY
6

7 8122. For purposes of this chapter, the following definitions
8 shall apply:

9 (a) “Veteran” means a living or deceased person who meets all
10 of the following conditions:

11 (1) Either served in the active military or naval service of the
12 United States during a war in which the United States was engaged,
13 or served in active duty in a force of any organized state militia,
14 not including the inactive National Guard and not including the
15 California National Guard when in an inactive, full-time status.

16 (2) Was released from the service otherwise than by
17 dishonorable discharge or was furloughed to the reserve.

18 (b) “Veteran’s commemorative property” means any monument,
19 headstone, marker, memorial, plaque, statue, vase, urn, flagholder,
20 badge, or shield that meets all of the following conditions:

1 (1) Identifies or commemorates any veteran or group of veterans,
2 including, but not limited to, any veterans' organization or any
3 military unit, company, battalion, or division.

4 (2) Is located in any cemetery.

5 8123. (a) Except as provided in subdivision (b) *and Section*
6 *8124*, no person or entity shall sell, trade, or transfer veteran's
7 commemorative property.

8 (b) Any person, unincorporated association, cemetery
9 corporation, or religious corporation, except a municipal
10 corporation described in Section 8137, that owns or controls a
11 cemetery where any veteran's commemorative property has been
12 placed that wishes to sell, trade, or transfer veteran's
13 commemorative property shall petition the superior court in the
14 county in which the veteran's commemorative property is located
15 for permission to sell, trade, or transfer all or any part of the
16 veteran's commemorative property. The court may approve the
17 sale, trade, or transfer of the veteran's commemorative property
18 under any of the following conditions:

19 (1) The veteran's commemorative property is at reasonable risk
20 of physically deteriorating so that it will become unrecognizable
21 as identifying or commemorating the veteran or group of veterans
22 originally identified or commemorated thereby and the veteran's
23 commemorative property that is to be sold, traded, or transferred
24 is replaced at its original site by a fitting replacement
25 commemorative property, monument, or marker that appropriately
26 identifies and commemorates the veteran or group of veterans.

27 (2) The veteran's commemorative property is proposed to be
28 sold, traded, or transferred to a suitable person that will preserve
29 the current condition of the veteran's commemorative property
30 and place the veteran's commemorative property in a suitable place
31 that will commemorate the veteran or group of veterans.

32 (3) The petitioner needs to sell, trade, or transfer the veteran's
33 commemorative property to ensure that sufficient funds are
34 available to suitably maintain the cemetery where the veteran's
35 commemorative property was placed, and the specific lot, plot,
36 grave, burial place, niche, crypt, or other place of interment of a
37 veteran or group of veterans, so that the place will retain the respect
38 that these hallowed places deserve.

39 (4) If the veteran's commemorative property to be sold, traded,
40 or transferred is reasonably known to the petitioner to have been

1 donated to the petitioner by any veterans' organization, historical
2 organization, civic organization, or an individual, the sale, trade,
3 or transfer shall have been consented to by that veterans'
4 organization, historical organization, civic organization, or
5 individual.

6 (5) If the petitioner is not the owner of the veteran's
7 commemorative property that is to be sold, traded, or transferred,
8 the petitioner is authorized by the owner of the veteran's
9 commemorative property to engage in the sale, trade, or transfer.

10 (6) By operation of any other law authorizing the sale, trade, or
11 transfer of the veteran's commemorative property.

12 (c) A petition under subdivision (b) shall be filed with the clerk
13 of the superior court. Upon receipt of the petition, the clerk shall
14 fix the time and date for the hearing. The date fixed for the hearing
15 shall be within a reasonable time after the petition is filed.

16 (d) The petitioner shall serve notice of the hearing and a copy
17 of the petition upon the persons and entities mentioned in
18 paragraphs (1) to (6), inclusive, of subdivision (e) who could
19 reasonably be ascertained and contacted by the petitioner and upon
20 any other person as may be directed by the court. Service of the
21 notice of hearing and petition shall be made in a manner and by a
22 date as shall be specified by the court.

23 (e) At the hearing held pursuant to subdivision (c), the following
24 persons and entities, or their representatives, may be heard:

25 (1) The petitioner.

26 (2) Any person, other than the petitioner, who is the owner of
27 the veteran's commemorative property in question.

28 (3) Any veterans' organization, historical organization, civic
29 organization, or individual that donated the veteran's
30 commemorative property in question to the petitioner.

31 (4) The family of each veteran at whose lot, plot, grave, burial
32 place, niche, crypt, or other place of interment the veteran's
33 commemorative property in question is or was placed.

34 (5) The Division of Veterans Services within the Department
35 of Veterans Affairs.

36 (6) The Department of Parks and Recreation.

37 (7) Any other member of the public who would like to offer
38 written or oral testimony.

39 (f) Testimony may be heard in person or by counsel or submitted
40 in writing.

1 (g) An order of the court granting the petition, in whole or in
2 part, or modifying the petition, may, at the discretion of the court,
3 specify the manner in which the petitioner is to use or apply the
4 proceeds of the sale, trade, or transfer. In particular, but not by
5 way of limitation, if the petitioner is an unincorporated association
6 or corporation that is subject to the Nonprofit Corporation Law
7 (Division 2 (commencing with Section 5000) of Title 1 of the
8 Corporations Code), any order of the court granting the petition,
9 in whole or in part, or modifying the petition, may, at the discretion
10 of the court, specify that the petitioner deposit the proceeds of the
11 sale, trade, or transfer in the permanent maintenance fund
12 maintained by the petitioner pursuant to the Nonprofit Corporation
13 Law.

14 (h) A person who violates any provision of this section is guilty
15 of a misdemeanor punishable by a fine of not less than one hundred
16 dollars (\$100) or more than one thousand dollars (\$1,000) or by
17 imprisonment in a county jail for not less than 10 days or more
18 than six months, or by both that fine and imprisonment; and in
19 addition is liable for all costs, expenses, and disbursements paid
20 or incurred by the person prosecuting the case.

21 *8124. Nothing in this chapter shall be interpreted to prohibit*
22 *a cemetery corporation or funeral establishment from selling new*
23 *veteran's commemorative property on either an at-need or*
24 *pre-need basis.*

25 SEC. 2. No reimbursement is required by this act pursuant to
26 Section 6 of Article XIII B of the California Constitution because
27 the only costs that may be incurred by a local agency or school
28 district will be incurred because this act creates a new crime or
29 infraction, eliminates a crime or infraction, or changes the penalty
30 for a crime or infraction, within the meaning of Section 17556 of
31 the Government Code, or changes the definition of a crime within
32 the meaning of Section 6 of Article XIII B of the California
33 Constitution.