

Assembly Bill No. 1225

CHAPTER 774

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.

[Approved by Governor September 29, 2012. Filed with
Secretary of State September 29, 2012.]

LEGISLATIVE COUNSEL'S DIGEST

AB 1225, 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.

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

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

CHAPTER 6. VETERAN'S COMMEMORATIVE PROPERTY

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

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

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

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

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

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

(2) Is located in any cemetery.

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

(b) Any person, unincorporated association, cemetery corporation, or religious corporation, except a municipal corporation described in Section 8137, that owns or controls a cemetery where any veteran’s commemorative property has been placed that wishes to sell, trade, or transfer veteran’s commemorative property shall 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 court may approve the sale, trade, or transfer of the veteran’s commemorative property under any of the following conditions:

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

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

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

(4) If the veteran's commemorative property to be sold, traded, or transferred is reasonably known to the petitioner to have been donated to the petitioner by any veterans' organization, historical organization, civic organization, or an individual, the sale, trade, or transfer shall have been consented to by that veterans' organization, historical organization, civic organization, or individual.

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

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

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

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

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

(1) The petitioner.

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

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

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

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

(6) The Department of Parks and Recreation.

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

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

(g) An order of the court granting the petition, in whole or in part, or modifying the petition, may, at the discretion of the court, specify the manner in which the petitioner is to use or apply the proceeds of the sale, trade, or transfer. In particular, but not by way of limitation, if the petitioner is an unincorporated association or corporation that is subject to the Nonprofit Corporation Law (Division 2 (commencing with Section 5000) of Title 1 of the Corporations Code), any order of the court granting the petition, in

whole or in part, or modifying the petition, may, at the discretion of the court, specify that the petitioner deposit the proceeds of the sale, trade, or transfer in the permanent maintenance fund maintained by the petitioner pursuant to the Nonprofit Corporation Law.

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

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

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