

AMENDED IN SENATE MARCH 31, 2016

SENATE BILL

No. 1179

Introduced by Senator Vidak

February 18, 2016

An act to amend Section 9002 of, and to add Chapter 5.5 (commencing with Section 9069.10) to Part 4 of Division 8 of, the Health and Safety Code, relating to cemeteries.

LEGISLATIVE COUNSEL'S DIGEST

SB 1179, as amended, Vidak. Public cemetery districts: interment rights.

Existing law, the Public Cemetery District Law, specifies the procedures for the formation of public cemetery districts, procedures for the selection of the district board of trustees and officers, and the powers and duties of the board. Existing law authorizes a public cemetery district to sell "interment rights", *rights*, " defined as the right to use or control the use of a plot, niche, or other space in a public cemetery district for interment of human remains. Existing law provides for the succession of an interment plot in a private cemetery.

This bill would ~~expand~~ *modify* the definition of "interment rights" ~~to~~ *to, among other things*, specify that those rights are a form of personal property rights held by the owner to determine, among other things, the number and identity of any person or persons to be interred in the ~~plot, niche, crypt, or other space for the interment of human remains~~ *plot* within a public cemetery. The bill would require the owner of an interment right, at the time of purchase, to designate a successor owner or owners in a signed ~~writing~~ *written designation* deposited with the cemetery district, as specified. The bill would provide the order of succession that would apply, if the owner dies without making that

written designation or a valid and enforceable disposition of the interment right in a ~~testamentary~~ *testamentary* device.

The bill also would provide the circumstances and process under which human remains may be disinterred, reinterred, or removed from a public cemetery district after interment, and would specify the records required to be maintained by the public cemetery district and the person removing and relocating the human remains. The bill would require a person who purports to be the successor owner of an interment right to execute a written ~~statement~~, *affidavit*, under penalty of perjury, that includes specified information regarding his or her claim of successorship, and would provide that a district or district employee or trustee are not liable for claims, losses, or damages resulting from transferring an interment right in reliance on that ~~statement~~, *affidavit*, except as provided.

By expanding the scope of the crime of perjury, this 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. Section 9002 of the Health and Safety Code is
- 2 amended to read:
- 3 9002. The definitions in Chapter 1 (commencing with Section
- 4 7000) of Part 1 of Division 7 apply to this part. Further, as used
- 5 in this part, the following terms have the following meanings:
- 6 (a) "Active militia" means the active militia as defined by
- 7 Section 120 of the Military and Veterans Code.
- 8 (b) "Armed services" means the armed services as defined by
- 9 Section 18540 of the Government Code.
- 10 (c) "Board of trustees" means the legislative body of a district.
- 11 (d) "District" means a public cemetery district created pursuant
- 12 to this part or any of its statutory predecessors.
- 13 (e) "Domestic partner" means two adults who have chosen to
- 14 share one another's lives in an intimate and committed relationship

1 of mutual caring, and are qualified and registered with the Secretary
2 of State as domestic partners in accordance with Division 2.5 of
3 the Family Code.

4 (f) “Family member” means any spouse, by marriage or
5 otherwise, domestic partner, child or stepchild, by natural birth or
6 adoption, parent, brother, sister, half-brother, half-sister,
7 parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt,
8 uncle, first cousin, or any person denoted by the prefix “grand” or
9 “great,” or the spouse of any of these persons.

10 (g) “Firefighter” means a firefighter as defined by Section
11 1797.182.

12 (h) (1) “Interment right” means the rights held by the owner to
13 use or control the use of a ~~plot, niche, crypt, or other space~~, *plot*
14 authorized by this part, for the interment of human remains,
15 including both of the following rights:

16 (A) To determine the number and identity of any person or
17 persons to be interred in the ~~plot, niche, crypt, or other space for~~
18 ~~the interment of human remains~~ *plot* within a cemetery in
19 conformance with all applicable regulations adopted by the
20 cemetery district.

21 (B) To control the placement, design, wording, and removal of
22 memorial markers in compliance with all applicable regulations
23 adopted by the cemetery district.

24 (2) An interment right is a form of personal property, and is
25 governed by Chapter 5.5 (commencing with Section 9069.10).

26 (i) “Nonresident” means a person who does not reside within a
27 district or does not pay property taxes on property located in a
28 district.

29 (j) “Peace officer” means a peace officer as defined by Section
30 830 of the Penal Code.

31 (k) “Principal county” means the county having all or the greater
32 portion of the entire assessed value, as shown on the last equalized
33 assessment roll of the county or counties, of all taxable property
34 within a district.

35 (l) “Voter” means a voter as defined by Section 359 of the
36 Elections Code.

37 SEC. 2. Chapter 5.5 (commencing with Section 9069.10) is
38 added to Part 4 of Division 8 of the Health and Safety Code, to
39 read:

CHAPTER 5.5. INTERMENT RIGHTS

1
2
3 9069.10. An interment right does not include the right for
4 disinterment of human remains except on consent of the cemetery
5 district and the written consent of the surviving spouse, child,
6 parent, or sibling, in that order of priority.

7 9069.15. (a) This chapter does not apply to, or prohibit, the
8 removal of remains from one plot to another in the same cemetery
9 or the removal of remains by a cemetery district upon the written
10 order of any of the following:

11 (1) The superior court of the county in which the cemetery is
12 located.

13 (2) The coroner having jurisdiction of the location of the
14 cemetery.

15 (3) The health department having jurisdiction of the cemetery.

16 (b) The cemetery district shall maintain a duplicate copy of an
17 order pursuant to subdivision (a).

18 (c) The cemetery district shall retain a true and correct record
19 of a removal of remains pursuant to subdivision (a) that includes
20 all of the following:

21 (1) The date the remains were removed.

22 (2) The name and the age at death of the person whose remains
23 were removed if available.

24 (3) The cemetery and plot from which the remains were
25 removed.

26 (4) (A) If the removed remains are reinterred, the plot number,
27 cemetery name, and location to which the remains were reinterred.

28 (B) If the removed remains are disposed of other than by being
29 reinterred, a record of the alternate disposition.

30 (5) *If the removed remains are reinterred at the cemetery, the*
31 *date of reinterment.*

32 (d) The person making the removal shall deliver to the cemetery
33 district operating the cemetery from which the remains were
34 removed a true, full, and complete copy of the record containing
35 all of the information specified in subdivision (c).

36 9069.20. (a) An interment right is the sole and separate
37 property of the person listed as the owner in the records of the
38 cemetery district, subject to any written ~~declaration~~ *designation*
39 to the contrary signed by the owner and deposited with the
40 cemetery district, or pursuant to a valid *will or* trust, or as directed

1 by a superior court of competent jurisdiction in a probate
2 proceeding.

3 (b) The owner of record of an interment right may designate in
4 writing the person or persons, other than the owner of record, who
5 may be interred in the ~~plot, niche, or mausoleum~~ *plot* to which the
6 owner holds the interment right.

7 (c) The owner of an interment right shall, at the time of purchase,
8 designate a successor owner or owners of the interment right in a
9 signed ~~writing~~ *written designation* deposited with the district if
10 those successors are qualified by this part to own interment rights
11 in the district.

12 (d) Use of an interment right transferred from the owner to a
13 successor pursuant to subdivision (c) shall be made in compliance
14 with applicable provisions of state and local law, and of applicable
15 requirements or policies established by the district board of trustees.

16 9069.25. (a) If the owner of an interment right dies without
17 making a valid and enforceable disposition of the interment right
18 in a testamentary device, or by a written designation pursuant to
19 subdivision (c) of Section 9069.20, the successor to the interment
20 right shall be determined pursuant to subdivision (b) or as directed
21 by a superior court of competent jurisdiction in a probate
22 proceeding.

23 (b) The priority order of succession is as follows:

24 (1) ~~First, to a~~ *The competent* surviving spouse or registered
25 domestic partner.

26 (2) To either of the following:

27 (A) A sole surviving competent adult ~~child~~ *child of the deceased*
28 *owner*.

29 (B) If there is more than one competent adult ~~child~~ *child of the*
30 *deceased owner*, the majority of the surviving competent adult
31 children. However, less than the majority of the surviving
32 competent adult children shall be vested with the rights ~~and duties~~
33 of this section if they have used reasonable effort to notify all other
34 surviving competent adult children of their instructions and are
35 not aware of any opposition to those instructions by any surviving
36 competent adult children.

37 (3) To the surviving competent parent or parents of the *deceased*
38 *owner*. If one surviving competent parent is absent, the remaining
39 competent parent shall be vested with the rights ~~and duties~~ pursuant

1 to this section after reasonable efforts have been unsuccessful in
2 locating the absent surviving competent parent.

3 (4) Either of the following:

4 (A) To the sole surviving competent adult sibling of the
5 *deceased* owner.

6 (B) If there is more than one surviving competent adult ~~sibling,~~
7 *sibling of the deceased owner*, then to the majority of the surviving
8 competent adult siblings. However, less than the majority of
9 competent adult siblings of the *deceased* owner shall be vested
10 with the rights and duties pursuant to this section if they have used
11 reasonable efforts to notify all other surviving competent adult
12 siblings of their instructions and are not aware of any opposition
13 to those instructions by any surviving competent adult sibling.

14 (5) If no spouse, child, parent, or sibling survives, ~~the interment~~
15 ~~right may be used in the order of death first,~~ to the spouse of any
16 child of the record owner and second, in the order of death to the
17 *deceased owner*.

18 ~~(6) To the next heirs at law of the deceased owner or the spouse~~
19 ~~of any heir at law.~~

20 ~~(6) The spouse of any deceased child of the owner.~~

21 (c) *A surviving spouse, registered domestic partner, child, or*
22 *heir who has an interment right pursuant to this section may waive*
23 *that interment right in favor of any other relative of the deceased*
24 *owner or spouse of a relative of the deceased owner.*

25 9069.30. For purposes of this chapter, the following definitions
26 apply:

27 (a) “Adult” means an individual who has attained 18 years of
28 age.

29 (b) “Child” means a natural or adopted child.

30 (c) An individual is “competent” if he or she has either not been
31 declared incompetent by a court of law or has been declared
32 competent by a court of law following a declaration of
33 incompetence.

34 9069.35. When a public cemetery district acts to transfer
35 ownership rights or make an interment on the basis of the
36 ~~declaration,~~ *affidavit*, given under penalty of perjury pursuant to
37 Section 9069.40, the district, and any employee or trustee of the
38 district, shall not be liable for any claims, losses, or damages
39 asserted in any action unless the district had actual knowledge that
40 the facts stated in writing are false.

1 9069.40. A person who purports to be the successor owner of
2 an interment right shall execute a written ~~statement~~, *affidavit*
3 declaring, under penalty of perjury, all of the following:

4 (a) He or she is the person entitled to succeed to the interment
5 right pursuant to Section 9069.25.

6 (b) He or she has exerted all reasonable efforts to find other
7 persons who may have an equal or higher claim to succeed to the
8 interment right.

9 (c) He or she is unaware, to the best of his or her knowledge,
10 of any opposition challenging his or her right to succeed to the
11 interment right.

12 9069.45. Upon the sale to a person of a ~~plot, niche, crypt, or~~
13 ~~other space for interment~~ *plot* in a cemetery within a district, the
14 district shall notify the purchaser, in writing, of any interment
15 rights, that this chapter governs the succession of ownership of
16 the interment rights, and the district's duly adopted policies, rules,
17 and regulations governing the use, sale, or other transfer of
18 interment rights.

19 SEC. 3. No reimbursement is required by this act pursuant to
20 Section 6 of Article XIII B of the California Constitution because
21 the only costs that may be incurred by a local agency or school
22 district will be incurred because this act creates a new crime or
23 infraction, eliminates a crime or infraction, or changes the penalty
24 for a crime or infraction, within the meaning of Section 17556 of
25 the Government Code, or changes the definition of a crime within
26 the meaning of Section 6 of Article XIII B of the California
27 Constitution.