

AMENDED IN ASSEMBLY JUNE 6, 2016

AMENDED IN SENATE APRIL 21, 2016

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," 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 modify the definition of "interment rights" to, among other things, specify that those rights are ~~a form of personal property rights~~ *transferable property interest* held by the owner to determine, among other things, the number and identity of any person or persons to be interred in the 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 written designation deposited

with the cemetery district. The bill would provide ~~the~~ *that the intestate 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 by a specific devise in a testamentary device. The bill would also require the public cemetery district to follow specified procedures in the event that the owner dies with no heirs at law.*

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 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 is not liable for claims, losses, or damages resulting from transferring an interment right in reliance on that affidavit, except as provided.

By expanding the scope of the crime of perjury and imposing new duties on public cemetery districts, 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 with regard to certain mandates no reimbursement is required by this act for a specified reason.

With regard to any other mandates, this bill would provide that, if the Commission on State Mandates determines that the bill contains costs so mandated by the state, reimbursement for those costs shall be made pursuant to the statutory provisions noted above.

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:

- 1 (a) “Active militia” means the active militia as defined by
2 Section 120 of the Military and Veterans Code.
- 3 (b) “Armed services” means the armed services as defined by
4 Section 18540 of the Government Code.
- 5 (c) “Board of trustees” means the legislative body of a district.
- 6 (d) “District” means a public cemetery district created pursuant
7 to this part or any of its statutory predecessors.
- 8 (e) “Domestic partner” means two adults who have chosen to
9 share one another’s lives in an intimate and committed relationship
10 of mutual caring, and are qualified and registered with the Secretary
11 of State as domestic partners in accordance with Division 2.5 of
12 the Family Code.
- 13 (f) “Family member” means any spouse, by marriage or
14 otherwise, domestic partner, child or stepchild, by natural birth or
15 adoption, parent, brother, sister, half-brother, half-sister,
16 parent-in-law, brother-in-law, sister-in-law, nephew, niece, aunt,
17 uncle, first cousin, or any person denoted by the prefix “grand” or
18 “great,” or the spouse of any of these persons.
- 19 (g) “Firefighter” means a firefighter as defined by Section
20 1797.182.
- 21 (h) (1) “Interment right” means the rights held by the owner to
22 use or control the use of a plot authorized by this part, for the
23 interment of human remains, including both of the following rights:
- 24 (A) To determine the number and identity of any person or
25 persons to be interred in the plot within a cemetery in conformance
26 with all applicable regulations adopted by the cemetery district.
- 27 (B) To control the placement, design, wording, and removal of
28 memorial markers in compliance with all applicable regulations
29 adopted by the cemetery district.
- 30 (2) An interment right is ~~a form of personal property,~~
31 *transferable property interest*, and is governed by Chapter 5.5
32 (commencing with Section 9069.10).
- 33 (i) “Nonresident” means a person who does not reside within a
34 district or does not pay property taxes on property located in a
35 district.
- 36 (j) “Peace officer” means a peace officer as defined by Section
37 830 of the Penal Code.
- 38 (k) “Principal county” means the county having all or the greater
39 portion of the entire assessed value, as shown on the last equalized

1 assessment roll of the county or counties, of all taxable property
2 within a district.

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

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

8

9

CHAPTER 5.5. INTERMENT RIGHTS

10

11 9069.10. An interment right does not include the right for
12 disinterment of human remains except on consent of the cemetery
13 district and the written consent of the surviving spouse, child,
14 parent, or sibling, in that order of priority.

15 9069.15. (a) This chapter does not apply to, or prohibit, the
16 removal of remains from one plot to another in the same cemetery
17 or the removal of remains by a cemetery district upon the written
18 order of any of the following:

19 (1) The superior court of the county in which the cemetery is
20 located.

21 (2) The coroner having jurisdiction of the location of the
22 cemetery.

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

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

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

29 (1) The date the remains were removed.

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

32 (3) The cemetery and plot from which the remains were
33 removed.

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

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

38 (5) If the removed remains are reinterred at the cemetery, the
39 date of reinterment.

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

5 ~~9069.20. (a) An interment right is the personal property of~~
6 ~~provides a transferable property interest to the person listed as~~
7 ~~the owner in the records of the cemetery district, subject to any~~
8 ~~written designation to the contrary signed by the owner and~~
9 ~~deposited with the cemetery district, or pursuant to a valid will or~~
10 ~~trust, or as directed by a superior court of competent jurisdiction~~
11 ~~in a probate proceeding; to the owner's successor pursuant to~~
12 ~~either this section or subdivision (a) of Section 9069.25. An~~
13 ~~interment right shall not be construed as conferring title to the~~
14 ~~property burdened by the transferable property interest.~~

15 (b) The owner of record of an interment right may designate in
16 writing the person or persons, other than the owner of record, who
17 may be interred in the plot to which the owner holds the interment
18 right.

19 (c) The owner of an interment right shall, at the time of purchase,
20 designate a successor owner or owners of the interment right in a
21 signed written designation deposited with the district.

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

26 ~~9069.25. (a) If the owner of an interment right dies without~~
27 ~~making a valid and enforceable disposition of the interment right~~
28 ~~in a testamentary device, or by a written designation pursuant to~~
29 ~~subdivision (c) of Section 9069.20, the successor to the interment~~
30 ~~right shall be determined pursuant to subdivision (b) or as directed~~
31 ~~by a superior court of competent jurisdiction in a probate~~
32 ~~proceeding.~~

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

34 ~~(1) The competent surviving spouse or registered domestic~~
35 ~~partner.~~

36 ~~(2) To either of the following:~~

37 ~~(A) A sole surviving competent adult child of the deceased~~
38 ~~owner.~~

39 ~~(B) If there is more than one competent adult child of the~~
40 ~~deceased owner, the majority of the surviving competent adult~~

1 children. However, less than the majority of the surviving
2 competent adult children shall be vested with the rights of this
3 section if they have used reasonable effort to notify all other
4 surviving competent adult children of their instructions and are
5 not aware of any opposition to those instructions by any surviving
6 competent adult children.

7 (3) ~~To the surviving competent parent or parents of the deceased~~
8 ~~owner. If one surviving competent parent is absent, the remaining~~
9 ~~competent parent shall be vested with the rights pursuant to this~~
10 ~~section after reasonable efforts have been unsuccessful in locating~~
11 ~~the absent surviving competent parent.~~

12 (4) ~~Either of the following:~~

13 (A) ~~To the sole surviving competent adult sibling of the deceased~~
14 ~~owner.~~

15 (B) ~~If there is more than one surviving competent adult sibling~~
16 ~~of the deceased owner, then to the majority of the surviving~~
17 ~~competent adult siblings. However, less than the majority of~~
18 ~~competent adult siblings of the deceased owner shall be vested~~
19 ~~with the rights pursuant to this section if they have used reasonable~~
20 ~~efforts to notify all other surviving competent adult siblings of~~
21 ~~their instructions and are not aware of any opposition to those~~
22 ~~instructions by any surviving competent adult sibling.~~

23 (5) ~~If no spouse, child, parent, or sibling survives, to the spouse~~
24 ~~of any child of the deceased owner.~~

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

27 (e) ~~A surviving spouse, registered domestic partner, child, or~~
28 ~~heir who has an interment right pursuant to this section may waive~~
29 ~~that interment right in favor of any other relative of the deceased~~
30 ~~owner or spouse of a relative of the deceased owner.~~

31 9069.30. ~~For purposes of this chapter, the following definitions~~
32 ~~apply:~~

33 (a) ~~“Adult” means an individual who has attained 18 years of~~
34 ~~age.~~

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

36 (c) ~~An individual is “competent” if he or she has either not been~~
37 ~~declared incompetent by a court of law or has been declared~~
38 ~~competent by a court of law following a declaration of~~
39 ~~incompetence.~~

1 9069.25. (a) *If the owner of an interment right dies without*
2 *making a valid and enforceable disposition of the interment right*
3 *by a specific devise in a testamentary device, or by a written*
4 *designation pursuant to subdivision (c) of Section 9069.20, the*
5 *interment right shall pass according to the laws of intestate*
6 *succession as set forth in Sections 6400 to 6413, inclusive, of the*
7 *Probate Code. In the event that the owner has no heirs at law, the*
8 *district shall follow the abandonment procedures established under*
9 *Section 9069.*

10 (b) *A surviving spouse, registered domestic partner, child,*
11 *parent, or heir who has an interment right pursuant to this section*
12 *may waive that interment right in favor of any other relative of the*
13 *deceased owner or spouse of a relative of the deceased owner.*

14 ~~9069.35.~~

15 9069.30. When a public cemetery district acts to transfer
16 ownership rights or make an interment on the basis of the affidavit,
17 given under penalty of perjury pursuant to Section ~~9069.40,~~
18 9069.35, the district, and any employee or trustee of the district,
19 shall not be liable for any claims, losses, or damages asserted in
20 any action unless the district had actual knowledge that the facts
21 stated in writing are false.

22 ~~9069.40.~~

23 9069.35. A person who purports to be the successor owner of
24 an interment right shall execute a written affidavit declaring, under
25 penalty of perjury, all of the following:

26 (a) He or she is the person entitled to succeed to the interment
27 right pursuant to Section ~~9069.25.~~ 9069.20.

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

31 (c) He or she is unaware, to the best of his or her knowledge,
32 of any opposition challenging his or her right to succeed to the
33 interment right.

34 ~~9069.45.~~

35 9069.40. Upon the sale to a person of a plot in a cemetery
36 within a district, the district shall notify the purchaser, in writing,
37 of any interment rights, that this chapter governs the succession
38 of ownership of the interment rights, and the district's duly adopted
39 policies, rules, and regulations governing the use, sale, or other
40 transfer of interment rights.

1 SEC. 3. No reimbursement is required by this act pursuant to
2 Section 6 of Article XIII B of the California Constitution for certain
3 costs that may be incurred by a local agency or school district
4 because, in that regard, this act creates a new crime or infraction,
5 eliminates a crime or infraction, or changes the penalty for a crime
6 or infraction, within the meaning of Section 17556 of the
7 Government Code, or changes the definition of a crime within the
8 meaning of Section 6 of Article XIII B of the California
9 Constitution.

10 However, if the Commission on State Mandates determines that
11 this act contains other costs mandated by the state, reimbursement
12 to local agencies and school districts for those costs shall be made
13 pursuant to Part 7 (commencing with Section 17500) of Division
14 4 of Title 2 of the Government Code.