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**AB-795 Private cemeteries: endowment funds.** (2019-2020)

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**Assembly Bill No. 795**

**CHAPTER 309**

An act to amend Section 8726.2 of, and to add Section 8726.3 to, the Health and Safety Code, relating to cemeteries.

[ Approved by Governor September 20, 2019. Filed with Secretary of State September 20, 2019. ]

**LEGISLATIVE COUNSEL'S DIGEST**

AB 795, Irwin. Private cemeteries: endowment funds.

Existing law authorizes a cemetery authority that maintains a private cemetery to place its cemetery under endowment care and to operate an endowment care fund. Existing law requires the principal of all funds for endowment care to be invested, and only the income to be used for the care of the cemetery. The term "income," for these purposes, means the distribution under either the net income distribution method or the unitrust distribution method. Existing law requires an endowment fund to be subject to a net income distribution method, and authorizes, on or after January 1, 2020, a cemetery authority to apply to the Cemetery and Funeral Bureau to convert its fund to a unitrust distribution method. The board is required to approve an application to convert a fund if certain conditions are met, including, the compensation to the trustee of the fund is limited to 0.1 % of the net fair market value of the assets as of the last trading day for each of the 3 preceding fiscal years.

This bill would instead authorize a cemetery authority to convert to a unitrust distribution method on or after January 1, 2021. The bill would additionally modify the requirements to convert an endowment care fund from a net income distribution method to a unitrust distribution method by requiring the compensation of the trustee, as defined, to be reasonable and meet specified requirements based on the net fair market value, as defined, of the endowment care fund. The bill would additionally prohibit the principal and income of the trust fund of a cemetery from being seized in any proceeding by any private entity, and would limit the use of the principal and income of the trust fund if it is seized by a public entity. The bill would additionally limit the use of the principal and income of the trust fund if ownership of the cemetery authority is transferred, as specified.

Vote: majority Appropriation: no Fiscal Committee: no Local Program: no

**THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:**

**SECTION 1.** Section 8726.2 of the Health and Safety Code is amended to read:

**8726.2.** (a) On or after January 1, 2021, a cemetery authority, its board of trustees, or its corporate trustee may apply to the Cemetery and Funeral Bureau to convert its endowment care fund from a net income distribution method to a unitrust distribution method.

(b) The bureau shall approve the application described in subdivision (a) only if all of the following conditions are met:

- (1) The cemetery authority, its board of trustees, or its corporate trustee provides the investment objectives of the trust and those objectives promote the mutual goals of (A) growing the principal assets to sufficiently cover the cost of future and ongoing care and maintenance of the cemetery and (B) generating income to support the cemetery, as described in Section 8726.
- (2) Evidence is provided that the cemetery authority, its board of trustees, or its corporate trustee will invest and manage the trust under the prudent investor rule, as described in Article 2.5 (commencing with Section 16045) of Chapter 1 of Part 4 of Division 9 of the Probate Code, including, but not limited to, the requirements of Section 16050 of the Probate Code.
- (3) The cemetery authority, its board of trustees, or its corporate trustee demonstrates sufficient knowledge and expertise in investing and managing the endowment care fund under the unitrust distribution method.
- (4) The unitrust amount is no more than 5 percent of the average net fair market value of the endowment care fund.
- (5) A reserve is created for future maintenance, repair, restoration of property, or embellishments in the cemetery for use when the endowment fund has inadequate funds for full distribution, as described in subparagraph (C) of paragraph (6). The cemetery authority, its board of trustees, or its corporate trustee may set aside a portion of the unitrust amount for the reserve.
- (6) (A) The distribution of the unitrust amount may be made to the cemetery authority on a monthly, quarterly, semiannual, or annual basis, unless the endowment care fund has inadequate funds for full distribution.
- (B) An endowment care fund has inadequate funds for full distribution if either of the following events occur:
- (i) The net fair market value of the endowment care fund, after the distribution, is less than 80 percent of the aggregate fair market value of the endowment care fund as of the end of the immediate preceding fiscal year.
  - (ii) The endowment care fund is less than the cumulative total of all principal contributions to the fund since inception.
- (C) (i) If the endowment care fund has inadequate funds for full distribution, the distribution shall be limited to the lesser of net income distribution or an amount no more than a unitrust distribution of 1.5 percent of the average net fair market value of the assets, and the fees and expenses associated with the management of the fund shall be paid by the cemetery authority.
- (ii) The cemetery authority, its board of trustees, or its corporate trustee may draw from the reserve described in paragraph (5) only during a fiscal year where there are inadequate funds for full distribution. An amount drawn from the reserve during that fiscal year shall be the lesser of the difference between the unitrust amount described in paragraph (4) and the limited distribution amount described in clause (i), or one-third of the total amount of the reserve.
- (7) (A) Notwithstanding Section 8733 or 8733.5, the compensation of the trustee shall be reasonable and shall meet the following conditions:
- (i) If the net fair market value of the endowment care fund as of the end of the immediately preceding fiscal year, as of the last trading day, is less than five hundred thousand dollars (\$500,000), the annual compensation of the trustee shall not exceed three thousand five hundred dollars (\$3,500).
  - (ii) If the net fair market value of the endowment care fund as of the end of the immediately preceding fiscal year, as of the last trading day, is five hundred thousand dollars (\$500,000) or more, the annual compensation of the trustee shall not exceed:
    - (I) 0.8 percent of the first one million dollars (\$1,000,000).
    - (II) 0.6 percent of the next four million dollars (\$4,000,000).
    - (III) 0.5 percent of the next five million dollars (\$5,000,000).
    - (IV) 0.15 percent of all amounts above ten million dollars (\$10,000,000).
- (B) The payment of the compensation of the trustee as set forth in subparagraph (A) shall be determined by a contractually prescribed schedule that is annual, semiannual, quarterly, or monthly with a schedule adopted for a period of no less than one year, and with relation to the net fair market value of the endowment care fund as of the end of the scheduled period, and the calculation of those fees as a percentage of that value shall be adjusted for that calculation.
- (C) Nothing in this paragraph requires the payment of compensation to the trustee in a fiscal year.
- (8) The cemetery authority has submitted all annual reports, pursuant to Section 7612.6 of the Business and Professions Code, for the previous five consecutive years.

(c) The bureau shall deny a cemetery authority's application if the bureau has found any of the conditions described in subdivisions (a) to (f), inclusive, of Section 7613.9 of the Business and Professions Code.

(d) To assist the bureau in making its determination, the cemetery authority, its board of trustees, or its corporate trustee shall provide all relevant trust documents, including a proposed trust instrument, if available. If relevant trust documents become available after the bureau makes a determination, the cemetery authority, its board of trustees, or its corporate trustee shall provide it to the bureau.

(e) (1) The bureau shall review on an annual basis whether a cemetery authority continues to meet the conditions of approval, described in subdivision (b), for the use of the unitrust distribution method.

(2) If the net fair market value of an endowment using the unitrust distribution method as of the end of the immediately preceding fiscal year falls to lower than five hundred thousand dollars (\$500,000), the bureau, in its review, shall consider the fees and expenses associated with the management of the fund.

(3) If a cemetery authority is determined not to meet the original conditions of approval described in subdivision (b), or has failed to file an annual report pursuant to Section 7612.6 of the Business and Professions Code, the cemetery authority may be required to revert to the use of the net income distribution method.

(f) The bureau may adopt rules to administer this section and ensure compliance, including, but not limited to, reporting requirements.

(g) The bureau shall evaluate the effectiveness of this section and report at its next two hearings before the Joint Sunset Review Oversight Hearings of the Assembly Committee on Business and Professions and Senate Committee on Business, Professions and Economic Development that occurs after January 1, 2018.

(h) For the purpose of this section, the following words have the following meanings:

(1) "Average net fair market value" means the net fair market value of the assets in the endowment care fund as of the last trading day for each of the three preceding fiscal years. Investment adviser fees and other operating expenses shall be deducted in determining the net fair market value.

(2) "Compensation of the trustee" means the total annual sum of all compensation paid to all trustees of an endowment care fund and to all agents and employees of those trustees.

(3) "Net fair market value" means the fair market value of the endowment care fund at a specified point in time after deducting investment adviser fees and other operating expenses.

(i) Nothing in this section relieves the trustee of the obligation to comply with the prudent investor rule, as described in Article 2.5 (commencing with Section 16045) of Chapter 1 of Part 4 of Division 9 of the Probate Code, including, but not limited to, Section 16050 of the Probate Code.

**SEC. 2.** Section 8726.3 is added to the Health and Safety Code, to read:

**8726.3.** (a) Notwithstanding any other law, the principal of the trust fund of a cemetery and all income from it shall be exempt from seizure, under any writ, mandate, or process, including bankruptcy, by any private entity, including, but not limited to, creditors of the beneficiaries, the trustee, or any person owning, operating, managing, conducting, or providing perpetual or endowed care to or for the cemetery for which the trust fund was created. In the event of seizure by any public entity, the principal and income of the trust fund shall only be available for the care, maintenance, and embellishment of that cemetery.

(b) If ownership of a cemetery authority is transferred pursuant to Section 8585, the principal and income of the trust fund shall only be available for the care, maintenance, and embellishment of that cemetery property in accordance with the provisions of law and the resolutions, bylaws, rules, and regulations or other actions or instruments of the cemetery authority.