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AB-651 Endowment care cemeteries: examination, investigation, and discipline. (2021-2022)

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Assembly Bill No. 651

CHAPTER 442

An act to amend Sections 7612.11, 7613.1, and 7653.9 of, and to add Section 7688 to, the Business and Professions Code, and to amend, repeal, and add Section 8738 of the Health and Safety Code, relating to cemeteries.

[Approved by Governor October 01, 2021. Filed with Secretary of State October 01, 2021.]

LEGISLATIVE COUNSEL'S DIGEST

AB 651, Gipson. Endowment care cemeteries: examination, investigation, and discipline.

Existing law, the Cemetery and Funeral Act, establishes the Cemetery and Funeral Bureau within the Department of Consumer Affairs and sets forth its powers and duties relating to the licensure and regulation of cemeteries, crematories, funeral establishments, and their personnel. Existing law authorizes a cemetery authority that maintains a cemetery to place its cemetery under endowment care and establish, maintain, and operate an endowment care fund.

Under existing law, an endowment care cemetery is defined as one which has deposited in its endowment care fund at the time of or not later than completion of the initial sale specified minimum amounts for plots sold or disposed of.

This bill would, over a 3-year period, increase the minimum amounts for each plot sold or disposed of that an endowment care cemetery is required to deposit in its endowment care trust fund, as prescribed.

Existing law requires the bureau to conduct a study to obtain information to determine if the endowment care fund levels of each licensee's cemetery are sufficient to cover the cost of future maintenance, as provided, and to report its findings and recommendations to the appropriate policy committees of the Legislature by January 1, 2018.

This bill would require the bureau to report the above-described findings and recommendations to the appropriate policy committees of the Legislature by January 1, 2029.

Existing law requires the bureau to examine the endowment care funds of a cemetery authority at least once every 5 years, and under specified circumstances, including if the cemetery authority in charge of the endowment care funds fails to file a required report. Existing law authorizes the bureau to make or cause an investigation of a licensee upon the filing of a complaint.

This bill would require the bureau to examine the endowment care funds of a cemetery authority if the bureau receives a valid complaint alleging the authority has engaged in financial misconduct or neglect of duties.

Existing law authorizes a court, based upon a finding that a cemetery manager of a private cemetery has ceased to perform specified duties, to appoint a temporary manager to manage the cemetery property and to service the prepaid interments of the private cemetery.

This bill would authorize a county in which a private cemetery is located to assume responsibility for the maintenance of the cemetery and to preserve public access to the cemetery, until the court appoints a temporary manager, if a court has not appointed a temporary manager within 6 months of the suspension, revocation, or surrender of the license of a cemetery manager of a private cemetery or the appointment of a temporary manager has expired. The bill would require a county that assumes maintenance responsibilities to provide specified services and would require the county to be reimbursed from the available income in the endowment care fund for the cost of maintenance services rendered.

Existing law provides that a licensing entity of the department retains the authority to institute or continue a disciplinary proceeding against a licensee, despite the suspension, expiration, or forfeiture by operation of law of a license, or its surrender without the written consent of the licensing entity, as provided.

This bill would require the director to coordinate and assist with any investigation of or action or criminal proceedings against a cemetery licensee and its officers, agents or employees that is conducted by another law enforcement entity, in the event of the cemetery licensee's expiration, suspension, or voluntary surrender of the license, as provided.

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

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

SECTION 1. Section 7612.11 of the Business and Professions Code is amended to read:

7612.11. (a) The bureau shall conduct a study to obtain information to determine if the endowment care fund levels of each licensee's cemetery are sufficient to cover the cost of future maintenance. The bureau shall also review the levels of endowment care funds that have previously been reported pursuant to this chapter by licensed cemeteries.

(b) The bureau shall report its findings and recommendations to the appropriate policy committees of the Legislature by January 1, 2029.

SEC. 2. Section 7613.1 of the Business and Professions Code is amended to read:

7613.1. The bureau shall examine the endowment care funds of a cemetery authority:

(a) Whenever it deems necessary and at least once every five years.

(b) Whenever the cemetery authority in charge of endowment care funds fails to file the report required by this article.

(c) Whenever the accountant or auditor qualifies their certification of the report that is prepared and signed by a certified public accountant licensed in the state and prepared in accordance with Section 7612.6.

(d) Whenever the bureau receives a valid complaint alleging the authority has engaged in financial misconduct or neglect of duties.

(e) The reasonable and necessary cost of the examination performed under subdivision (b) or (c) shall be paid by the cemetery authority.

(f) A certified copy of the actual costs, or a good faith estimate of the costs where actual costs are not available, signed by the director or the director's designee, shall be prima facie evidence of the reasonable and necessary costs of the examination.

(g) The actual and necessary expense of the examination under subdivision (a) shall, in the discretion of the bureau, be paid by the cemetery authority whenever the examination requires more than one day and the need for continuing the examination is directly related to identified omissions and errors in the management of endowment care funds.

SEC. 3. Section 7653.9 of the Business and Professions Code is amended to read:

7653.9. (a) Notwithstanding any other law, based upon a finding by a court of competent jurisdiction that a cemetery manager of a private cemetery has ceased to perform their duties, as described in subdivision (a) of Section 7611.4, due to a lapse, suspension, surrender, abandonment, or revocation of their license, the court may appoint a temporary manager to manage the cemetery property and to service the prepaid interments of the private cemetery. The court shall appoint a licensed cemetery manager as the temporary manager.

(b) The appointed temporary manager shall have the same powers over the care and maintenance of the private cemetery as a licensed cemetery manager, as described in subdivision (a) of Section 7611.4. The temporary manager shall serve for a limited term not to exceed six months, or until a new licensed manager has been hired, at which time the court shall terminate the appointment of the temporary manager.

(c) The court may authorize the payment of reasonable compensation for the temporary manager's services, which shall be paid by the trustees from available income from the cemetery. In exercising its discretion pursuant to this subdivision, the court shall give due consideration to the ability of the cemetery income to otherwise pay for care and maintenance of the cemetery.

(d) (1) Notwithstanding any other law, if a court has not appointed a temporary manager within six months of the suspension, revocation, or surrender of the license of a cemetery manager of a private cemetery or the appointment of a temporary manager has expired, the county in which the cemetery is located may assume responsibility for the maintenance of the cemetery and may preserve public access to the cemetery until the court can appoint a temporary manager.

(2) If a county assumes maintenance responsibilities for a cemetery under this subdivision, the county shall be reimbursed from the available income in the endowment care fund for maintenance services rendered until a temporary care manager is appointed by the court or a new permanent cemetery manager is found.

(3) If a county assumes maintenance responsibilities for a cemetery under this subdivision, the county shall perform, at a minimum, all of the following maintenance services on the cemetery property:

(A) Keep cemetery grounds open for public access.

(B) Trim or mow grass and prune shrubs and trees on cemetery grounds.

(C) Keep public areas of the cemetery grounds and water features clear of trash and debris.

(D) Provide a supply of water to keep cemetery grass and plants as green as possible with consideration of water availability.

SEC. 4. Section 7688 is added to the Business and Professions Code, to read:

7688. Notwithstanding any law, in the event of expiration or suspension of a license by operation of law or by order or decision of the director or a court of law, or the voluntary surrender of a license by a cemetery licensee, cemetery owner, cemetery operator, or holder of a cemetery certificate of authority, the director may coordinate and assist with any investigation of or action or criminal proceedings against the cemetery licensee and its officers, agents, or employees that is conducted by another law enforcement entity.

SEC. 5. Section 8738 of the Health and Safety Code is amended to read:

8738. (a) For purposes of this section, "net price" means the retail price less any discounts the cemetery provides to consumers for the purchase of an interment space.

(b) An endowment care cemetery is one which has deposited in its endowment care fund the minimum amounts heretofore required by law and shall hereafter have deposited in its endowment care fund at the time of or not later than completion of the initial sale not less than the following amounts for plots sold or disposed of:

(1) Either 3 percent of net price or one hundred fifty dollars (\$150), whichever is greater, with a required deposit not to exceed three thousand dollars (\$3,000), for each grave.

(2) Either 3 percent of net price or seventy-five dollars (\$75), whichever is greater, with a required deposit not to exceed three thousand dollars (\$3,000), for each niche.

(3) Either 3 percent of net price or one hundred fifty dollars (\$150), whichever is greater, with a required deposit not to exceed three thousand dollars (\$3,000), for each crypt.

(4) Either 3 percent of net price or seventy-five dollars (\$75), whichever is greater, for the cremated or hydrolyzed remains of each deceased person scattered in the cemetery at a garden or designated open area that is not an interment site subject to paragraph (1).

(c) This section shall remain in effect only until January 1, 2023, and as of that date is repealed.

SEC. 6. Section 8738 is added to the Health and Safety Code, to read:

8738. (a) For purposes of this section, "net price" means the retail price less any discounts the cemetery provides to consumers for the purchase of an interment space.

(b) An endowment care cemetery is one which has deposited in its endowment care fund the minimum amounts heretofore required by law and shall hereafter have deposited in its endowment care fund at the time of or not later than completion of the initial sale not less than the following amounts for plots sold or disposed of:

(1) Either 6 percent of net price or two hundred dollars (\$200), whichever is greater, with a required deposit not to exceed six thousand dollars (\$6,000), for each grave.

(2) Either 6 percent of net price or one hundred dollars (\$100), whichever is greater, with a required deposit not to exceed six thousand dollars (\$6,000), for each niche.

(3) Either 6 percent of net price or two hundred dollars (\$200), whichever is greater, with a required deposit not to exceed six thousand dollars (\$6,000), for each crypt.

(4) Either 6 percent of net price or one hundred dollars (\$100), whichever is greater, for the cremated or hydrolyzed remains of each deceased person scattered in the cemetery at a garden or designated open area that is not an interment site subject to paragraph (1).

(c) This section shall become operative on January 1, 2023.

(d) This section shall remain in effect only until January 1, 2024, and as of that date is repealed.

SEC. 7. Section 8738 is added to the Health and Safety Code, to read:

8738. (a) For purposes of this section, "net price" means the retail price less any discounts the cemetery provides to consumers for the purchase of an interment space.

(b) An endowment care cemetery is one which has deposited in its endowment care fund the minimum amounts heretofore required by law and shall hereafter have deposited in its endowment care fund at the time of or not later than completion of the initial sale not less than the following amounts for plots sold or disposed of:

(1) Either 10 percent of net price or two hundred fifty dollars (\$250), whichever is greater, with a required deposit not to exceed ten thousand dollars (\$10,000), for each grave.

(2) Either 10 percent of net price or one hundred fifty dollars (\$150), whichever is greater, with a required deposit not to exceed ten thousand dollars (\$10,000), for each niche.

(3) Either 10 percent of net price or two hundred fifty dollars (\$250), whichever is greater, with a required deposit not to exceed ten thousand dollars (\$10,000), for each crypt.

(4) Either 10 percent of net price or one hundred fifty dollars (\$150), whichever is greater, for the cremated or hydrolyzed remains of each deceased person scattered in the cemetery at a garden or designated open area that is not an interment site subject to paragraph (1).

(c) This section shall become operative on January 1, 2024.