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AB-3254 Endowment care cemeteries: reporting. (2023-2024)

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Assembly Bill No. 3254

CHAPTER 589

An act to amend Sections 7602 and 7612.2 of, to amend and repeal Section 7612.11 of, to add Section 7613.11 to, and to add and repeal Section 7612.12 of, the Business and Professions Code, relating to cemeteries.

[Approved by Governor September 25, 2024. Filed with Secretary of State September 25, 2024.]

LEGISLATIVE COUNSEL'S DIGEST

AB 3254, Berman. Endowment care cemeteries: reporting.

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 specifies that the powers and duties of the bureau shall be subject to review by the appropriate policy committees of the Legislature as if the chapter is scheduled to be repealed on January 1, 2025.

This bill would instead provide that the powers and duties of the bureau are subject to review as if the chapter is scheduled to be repealed on January 1, 2029.

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. 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, 2029.

This bill would require each licensed cemetery authority to provide prescribed information to the bureau for purposes of the above-described report on or before January 1, 2028. The bill would repeal the provisions relating to the above-described study on January 1, 2033, and would require the bureau to submit the report pursuant to a specified law. The bill would require the bureau, on or before July 1, 2027, to convene a workgroup to discuss options for ensuring continued care, maintenance, and embellishment of abandoned cemeteries, and would require the bureau to submit a report to the Legislature, no later than January 1, 2028, summarizing discussions of the workgroup and any recommendations. The bill would repeal those provisions on January 1, 2029.

Existing law makes it a misdemeanor for any cemetery corporation to make any interments without a certificate of authority, and specifies requirements for an application for a certificate of authority. Existing law, under certain conditions, authorizes the bureau to take possession of the endowment care funds and the books, records, and accounts of a cemetery authority.

This bill would require the bureau, 90 days following the cancellation, surrender, or revocation of a certificate of authority, to take title of any endowment care funds of the cemetery authority, take possession of books, records, property, and assets, and act as conservator of the management of the endowment care funds in a prescribed manner, except as specified. The bill would require

the bureau to appoint a bank or trust company, as specified, as sole trustee of the endowment care fund and would authorize the sum paid to the bank or trust company to exceed 5% of the net income derived from the endowment care fund, special care fund, or both. By prescribing various requirements related to the management of endowment care funds, the violation of which is a misdemeanor, this bill would impose a state-mandated local program.

This bill would make a technical change to a provision excluding specified entities from the act.

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 Local Program: yes

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

SECTION 1. Section 7602 of the Business and Professions Code is amended to read:

7602. (a) (1) There is in the department the Cemetery and Funeral Bureau, under the supervision and control of the director.

(2) The director may appoint a chief at a salary to be fixed and determined by the director, with the approval of the Director of Finance. The duty of enforcing and administering this chapter is vested in the chief, and the chief is responsible to the director. The chief shall serve at the pleasure of the director.

(3) Every power granted or duty imposed upon the director under this chapter may be exercised or performed in the name of the director by a deputy director or by the chief, subject to conditions and limitations the director may prescribe.

(b) Notwithstanding any other law, the powers and duties of the bureau, as set forth in this chapter, shall be subject to review by the appropriate policy committees of the Legislature. The review shall be performed as if this chapter is scheduled to be repealed on January 1, 2029.

SEC. 2. Section 7612.2 of the Business and Professions Code is amended to read:

7612.2. This article does not apply to any of the following:

(a) A religious corporation, church, religious society or denomination, a corporation sole administering temporalities of any church or religious society or denomination, or any cemetery organized, controlled, and operated by any of them.

(b) A public cemetery.

(c) Any private or fraternal burial park not exceeding 10 acres in area, established prior to September 19, 1939; however, (1) those cemeteries shall be subject to the cemetery brokerage provisions of this act, and (2) any cemetery shall be subject to all of the provisions of this act if it collects a care, maintenance, or embellishment deposit or sets up a trust for burial purposes pursuant to Section 8775 of the Health and Safety Code, including funeral services such as mortuary, cremation, or other commodities or services furnished at the time of and in connection with that funeral or cremation.

SEC. 3. 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) For purposes of the report required in subdivision (a), each licensed cemetery authority shall provide the following information to the bureau on or before January 1, 2028:

(1) The year the cemetery was established.

(2) The total size of the developed and undeveloped acres of the cemetery.

(3) The total acreage of the developed cemetery property that has been sold for interment, including preneed sales.

(4) The total acreage of land sold for interment that contains spaces for which endowment care fees have been collected.

(5) The total acreage of developed cemetery property remaining to be sold.

(6) The total acreage of undeveloped cemetery property remaining to be sold.

(7) The year the cemetery started collecting endowment care fees.

(8) The total number of spaces the cemetery has sold for interment, including preneed sales.

(9) Of the total spaces the cemetery has sold for interment, the total number of spaces that have contributed to the endowment care funds of the cemetery.

(10) The number of interment spaces remaining to be sold in all developed acreage.

(11) The number of interment spaces remaining to be sold in undeveloped acreage, to the extent known.

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

(d) (1) A report to be submitted pursuant to subdivision (b) shall be submitted in compliance with Section 9795 of the Government Code.

(2) Pursuant to Section 10231.5 of the Government Code, this section is repealed on January 1, 2033.

SEC. 4. Section 7612.12 is added to the Business and Professions Code, to read:

7612.12. (a) On or before July 1, 2027, the bureau shall convene a workgroup comprised of representatives from the cemetery industry, county government, and other interested stakeholders to discuss options for ensuring continued care, maintenance, and embellishment of abandoned cemeteries, including the possibility of requiring counties to assume responsibility for cemeteries located within their boundaries that become abandoned.

(b) In accordance with Section 9795 of the Government Code, the bureau shall submit a report to the Legislature summarizing the discussions of the workgroup, along with any recommendations, no later than January 1, 2028.

(c) This section shall remain in effect only until January 1, 2029, and as of that date is repealed.

SEC. 5. Section 7613.11 is added to the Business and Professions Code, to read:

7613.11. (a) Notwithstanding Sections 7613.9 and 7613.10, 90 days following the cancellation, surrender, or revocation of a certificate of authority, the bureau shall take title of any endowment care funds of the cemetery authority, take possession of all necessary books, records, property, real and personal, and assets, and act as conservator over the management of the endowment care funds in a manner consistent with Article 2 (commencing with Section 8725) of Chapter 5 of Part 3 of Division 8 of the Health and Safety Code.

(b) The bureau shall appoint as sole trustee of the endowment care fund a bank or trust company authorized under Division 1 (commencing with Section 99) of the Financial Code to engage in the trust business. Notwithstanding Section 8733 of the Health and Safety Code, the sum paid to the bank or trust company appointed by the bureau may exceed 5 percent of the net income derived from the endowment care fund, special care fund, or both.

(c) This section shall not apply if ownership of the cemetery is transferred in accordance with Section 8585 of the Health and Safety Code within 90 days of the cancellation, surrender, or revocation of the certificate of authority.

SEC. 6. 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.