

Department of Legislative Services
Maryland General Assembly
2011 Session

FISCAL AND POLICY NOTE

House Bill 556 (Delegate Clagett)
Health and Government Operations

Business Regulation - Cemeteries - Forfeited Rights to Interment

This bill specifies that interment rights at a cemetery may be forfeited under certain circumstances. A cemetery may initiate forfeiture proceedings allowed by the bill only in cases where it has been at least 50 years since the cemetery received an instruction from the owner or a member of the owner's family as to the use of the interment rights. The bill applies only to a cemetery that has a perpetual care trust fund and is registered with or permitted by the Office of Cemetery Oversight.

Fiscal Summary

State Effect: Potential minimal operational impact for the Office of Cemetery Oversight within the Department of Labor, Licensing, and Regulation (DLLR) to handle additional complaints related to the bill. The extent of any such impact cannot be reliably estimated but is expected to be absorbable within existing resources. The bill does not materially affect the operations or finances of the Office of the Attorney General. Revenues are not affected.

Local Effect: The bill does not materially affect the operations or finances of local State's Attorney's offices in the State.

Small Business Effect: Potential minimal.

Analysis

Bill Summary: A cemetery that initiates forfeiture proceedings under the bill must send a notice to the owner of the interment space or, if the owner is deceased, all known members of the owner's family. The cemetery must also place an advertisement in a

local newspaper that would notify the owner of the right to interment that may be forfeited. An unused right to interment is forfeited to the cemetery if no response is received within 60 days.

If the owner of a right to interment or an individual entitled to use a right to interment that has been forfeited demands the right to use an interment space that is no longer available, the cemetery must give the individual the choice of (1) a replacement right to interment; or (2) a refund of the original amount paid for the right to interment.

The owner, or a member of the owner's family, may suspend a forfeiture proceeding by notifying the cemetery in writing of the intent to use the interment space. Such a written response terminates a forfeiture proceeding for at least 50 years.

A right to an interment forfeited is subject to all applicable requirements for perpetual care.

Current Law: The Office of Cemetery Oversight was established by Chapter 675 of 1997. The office regulates cemeteries and associated burial goods sales under the Maryland Cemetery Act. The office's registration and permitting requirements do not apply to (1) a person that owns and operates a *bona fide* religious-nonprofit cemetery in the State; (2) a cemetery owned by a non-for-profit organization created before 1900 by an act of the General Assembly; (3) a county, city, or municipal corporation that owns and operates a cemetery in the State; or (4) a veterans' cemetery operated by the State.

Each burial lot or crypt sold or conveyed in a cemetery must be held by the owner only for the purpose of burial. A certificate of ownership of a burial lot or crypt has the same effect as a conveyance of real property that is executed, acknowledged, and recorded as required by law.

"Perpetual care" is defined as maintenance, including the cutting of grass abutting memorials or monuments, administration, supervision, and embellishment of a cemetery and its grounds, roads, and paths. It includes the repair and renewal of buildings, including columbaria and mausoleums, and the property of the cemetery.

A person who sells or offers to sell a burial lot or burial right in a cemetery at which perpetual care is stated or implied is required to (1) keep detailed records of all such sales and all money received; and (2) must maintain a perpetual care trust fund. A certain percentage of the money received from the sale of rights of interment must be put in the trust fund. Records related to perpetual care trust requirements may be inspected by the director, the Attorney General or an authorized representative, and the State's Attorney for the county where the cemetery does business or where the cemetery is located.

If the director of the Office of Cemetery Oversight determines that a registered cemeterian, permit holder, or other person subject to perpetual care trust requirements has violated the Act, the director may refer the matter to the Attorney General for civil enforcement or the State's Attorney for criminal prosecution. The Attorney General may sue for injunctive or equitable relief or the imposition of a civil penalty of up to \$5,000.

State Fiscal Effect: DLLR advises that, in some cases, a family may still intend to use an interment space even if the family has not been in contact with the cemetery in more than 50 years because family records pertaining to interment spaces are often not reviewed until a death in the family occurs. DLLR further advises that the bill likely results in an increase in the number of complaints received by the Office of Cemetery Oversight as families discover that their burial lots, often purchased decades earlier, have been forfeited to the cemetery and resold. Nevertheless, the bill allows cemeteries to reclaim interment spaces under these circumstances. Thus, any operational impact resulting from additional complaints only applies to the extent that a cemetery did not comply with the bill's procedure for reclaiming interment spaces. The number of complaints received – particularly complaints requiring detailed investigation – by DLLR cannot be reliably estimated but is expected to be minimal and absorbable with existing resources.

Additional Information

Prior Introductions: None.

Cross File: None.

Information Source(s): Office of the Attorney General; Secretary of State; Department of Veterans Affairs; Department of Labor, Licensing, and Regulation; Department of Legislative Services

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mm/mcr

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