

Legislative Analysis



ABANDONED CEMETERY SPACES

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House Bill 4890 as enacted
Public Act 398 of 2014
Sponsor: Rep. Edward McBroom
House Committee: Regulatory Reform
Senate Committee: Regulatory Reform

Complete to 2-5-15

A SUMMARY OF HOUSE BILL 4890 AS ENACTED

House Bill 4890 would amend the Cemetery Regulation Act by adding Section 17, which would create guidelines that apply to several scenarios in which a cemetery owner or operator believes the right to a space within a cemetery has been abandoned. If all of the criteria in a given scenario are met, then the cemetery owner or operator may move to have the space certified as abandoned. Currently, the act does not address these situations.

The bill would define the "right to a space" as "the privilege, license, or right of interment in a space in a cemetery." Under the bill, a person possessing the right to a space within a cemetery is presumed to have abandoned that right if all of the following apply:

- During the past 60 years, the person possessing the right to a space or the person's authorized representative has not provided the cemetery owner or operator with an updated address for purposes of contacting the person.
- During the past 60 years, the person possessing the right to a space or the person's authorized representative has not contacted the cemetery owner or operator and affirmed possession of the right to a space in any of the following ways:
 - Requesting an interment or notifying the cemetery owner or operator of an interment.
 - Requesting an installation of a memorial or notifying the cemetery owner or operator of an installation of a memorial.
 - Indicating or requesting a transfer of the right to a space to another person.
 - Making a payment to the cemetery owner or operator relating to the right to a space.
 - Affirming in writing the possession of the right to a space.
- A memorial has not been installed at the cemetery under the right to a space.
- Remains have not been interred at the cemetery under the right to a space.

A right to a space may not be certified as abandoned if any of the following apply:

- An inscribed memorial is located on the space to which the right to a space applies.
- The space both immediately adjoins an inscribed memorial and that side of the memorial displays a family surname and the space was purchased with another space on which the inscribed memorial is located.
- The space both immediately adjoins an inscribed memorial and immediately adjoins a space that was purchased with the right to a space and includes interred remains.

For purposes of this section, an inscribed memorial is defined as either "a stone or other structure or item that is used for the purpose of memorializing a decedent on a place of interment and that displays the name of a decedent, or a stone or other structure or item that identifies an area of a cemetery dedicated to the interment of members of a family and that displays a family surname."

If all the following requirements are met, a cemetery owner or operator may certify a right to a space as having been abandoned:

- Written notice of intent to certify that space as abandoned has been posted on the space presumed to be abandoned for 120 consecutive days.
- If the cemetery owner or operator has an address for the person possessing the right to a space or the person's authorized representative, the owner or operator has sent a written notice of intent by certified mail with return receipt requested to that address.
- Not less than 60 days after posting notice on the space in question, the owner or operator has published in the local newspaper of record for two consecutive weeks a notice of intent to certify the right to the space as abandoned if any of the following apply:
 - The cemetery owner or operator does not have a mailing address for the person possessing that space or that person's authorized representative.
 - The notice sent to the address on file was returned as undeliverable or no contact with the cemetery owner or operator has been made by either the person holding the right to the space or an authorized representative within the 60 days since the notice was mailed.
- 60 days or more have passed since notice was published in the newspaper of record, and the person or authorized representative of the person who has the right to a space has not contacted the cemetery owner or operator.

The bill also would allow for the cemetery owner or operator to use an internet search in an attempt to find a current mailing address and also would allow the owner or operator to post the notice to certify on one or more internet websites. Any notice, either posted or mailed, would be required to state all of the following:

- A description of the space in question
- If known, the names of the person possessing the right to the space and that person's authorized representative, if any.
- The timeframe within which the person possessing the space, or that person's representative, must contact the owner or operator to affirm his or her right to that space before it would be certified as abandoned.
- The remedies available to the space's owner under Section 17 if that space is certified as abandoned.
- The name, address, email address, and telephone number of the cemetery owner or operator.

After meeting all of the requirements necessary to certify a space as abandoned, the owner or operator may then create a record that includes relevant information about the space in order to certify that it has been abandoned. Once the owner or operator signs the record to certify that a space has been abandoned, the individual formerly possessing the right to that space, or that individual's authorized representative, would be limited to the following remedies in order to assert a right to that space:

- The cemetery owner or operator would reinstate the right to a space if the original contractual right to a space has not been resold or otherwise transferred to another person, or
- If the original contractual right to a space had been resold, the cemetery owner or operator, at the option of the person with the original contractual right to a space, would either provide at no cost a different right to a space of comparable value within the cemetery or pay the person with the original contractual right an amount not exceeding 65% of the price for which space was resold, or the original amount paid for the space, whichever is greater.

If a person possessing a right to a space or the authorized representative was notified by the cemetery owner or operator and that person or representative did not seek to retain possession of the right to a space, then the right to a space would be transferred back to the cemetery owner or operator for an amount agreed upon by the parties.

A contract for the sale of a right to a space entered into by a cemetery owner or operator after the effective date of the new section (which would be January 1, 2015) would have to contain a written notice of the presumption of abandonment of a right to a space and could impose a legal duty to keep the cemetery owner or operator informed in writing of a current residence address of the person possessing the right to a space under the contract or of the person's authorized representative.

FISCAL IMPACT:

The bill would not have a significant fiscal impact on the state or local units of government.

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■ This analysis was prepared by nonpartisan House staff for use by House members in their deliberations, and does not constitute an official statement of legislative intent.