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133rd General Assembly

Bill Analysis

Version: As Introduced

Primary Sponsor: Sen. Roegner

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SUMMARY

- Provides that a pet cemetery land owner need not obtain authorization from persons with burial rights in the cemetery to remove the land-use restriction from any portion of the cemetery used for communal burial of pets or where the remains have decomposed to the point they are indistinguishable from the soil.
- Expressly permits a land owner to seek removal of the restriction of only part of the cemetery property.
- Requires a land owner that seeks to remove a pet cemetery restriction from a piece of land containing pet remains to send a notice to each person who owns a burial right in that land, asking for authorization to remove the restriction.
- Provides that authorization is presumed if the cemetery land owner does not receive a response to the notice within 30 days.
- Requires any person who responds to the notice, but withholds authorization, to provide written proof or satisfactory documentation of the burial right and that a burial has occurred where the restriction exists.
- Imposes on the purchaser or owner of a burial right in a pet cemetery the duty to notify the cemetery operator and land owner of a change of address.
- Specifies that the duty to prepare annual reports of the assets and investments of a pet cemetery endowment care fund, as required under continuing law, is the responsibility of the pet cemetery operator.
- Explicitly exempts any person owning land with a pet cemetery restriction from having to establish an endowment care fund if the person does not operate a pet cemetery or sell or offer to sell a burial or interment right in relation to the land.
- Establishes that there is no private right of action relating to enforcement of specified provisions of the Pet Cemetery Law.

DETAILED ANALYSIS

Overview

The bill makes changes relating to pet cemetery land owner and operator obligations and revises, in part, the procedures of removing a pet cemetery restriction. It also specifies where a private right of action does not exist under the law, in addition to other changes.

Restriction removal

The bill amends the process for removing a pet cemetery restriction from a piece of land. Under existing law, unchanged by the bill, a land owner that plans on using the land as a pet cemetery must file with the county recorder a declaration restricting the land to purposes “usual and normal for the operation of a pet cemetery.” Once the restriction is recorded, the land cannot be used for any purpose besides “pet cemetery purposes.”¹

The only way to remove the restriction is for the land owner, or the owner’s heirs or assigns (owner), to file an action in the court of common pleas in the county where the land is located.² The court may remove the restriction if either of the following are true:

1. No interments have been made in, or all *pet remains* have been removed from, the land from which the restriction is sought to be removed; or
2. The owner has received, from those persons who own burial rights in the pet cemetery, written authorization to remove the restriction from the land.

Changes to both routes

Under the bill, the land owner need not remove the remains or obtain authorization to remove the restriction when the remains are fully decomposed or indistinguishable from the soil into which they have been interred, or are cremated ashes that have been scattered on the ground surface or otherwise dispersed. In other words, if the remains have completely decomposed, the law considers them to no longer be present on the land – the owner does not need to remove soil and is not required to obtain authorization.

In addition, the bill expressly permits an owner to seek removal of the restriction of only part of the cemetery property. For example, if only half of the property contains pet remains, the owner may opt to leave that portion as a pet cemetery and remove the restriction from the other half. Existing law appears to be an all-or-nothing procedure.³

Seeking authorization

For the second route – seeking authorization from those owning burial rights – the bill specifies how the owner must obtain the authorization. It requires the owner to send a notice by registered mail to the last known address of each person who owns a burial right within the portion of the cemetery where the restriction is sought to be removed asking for authorization

¹ R.C. 961.02, not in the bill.

² R.C. 961.05(A).

³ R.C. 961.01(C) and (I) and 961.05(B).

to remove the restriction. If the owner does not receive a response within 30 days from the date the notice was sent, consent to remove the restriction from that portion of the land is presumed. If a person responds but withholds authorization, the person must provide written proof or satisfactory documentation of ownership of the burial right and that a burial has occurred where the restriction is sought to be removed.

The bill requires the purchaser or owner of a burial right to notify the cemetery operator and the land owner of a change of address.

Under the bill, the owner is not required to obtain authorization for any portion of the pet cemetery used for communal burial of pets.⁴

Pet reinterment

Under existing law, if any person granting authorization wishes to have a pet that is already interred there removed and reinterred elsewhere, the person must state this on the authorization. The cemetery owner must then remove the pet remains and have them reinterred elsewhere and must provide proof that this was done to the person. The bill eliminates the requirement that the change of location be paid for by the cemetery owner.⁵

Endowment care fund

Existing law requires that any person desiring to operate a pet cemetery must, before selling or offering a burial right in the pet cemetery, establish an endowment care fund to provide income for its care, maintenance, administration, and embellishment. Under existing law, the annual reports of the assets and investment of the endowment care fund must be prepared and maintained, and made available for inspection to any owner of a burial right in the pet cemetery. The bill specifically imposes this duty on the pet cemetery operator. The bill also explicitly states that the law does not require a person owning land with a pet cemetery restriction to establish an endowment care fund if the person does not operate a pet cemetery or sell or offer to sell a burial or interment right in relation to that land.⁶

No private cause of action

The bill establishes that criminal enforcement is the only enforcement route for the Pet Cemetery Law related to any of the following:

1. Recording the restriction on the land or use of the land as a pet cemetery;
2. Operating a pet cemetery that is less than three acres in size;
3. Establishing an endowment care fund and representation of perpetual care.

There is no private right to sue to enforce these provisions. But, it does appear that an owner may sue relating to the removal of the restriction, discussed above.

⁴ R.C. 961.05(B)(2), (C), (G), and (H).

⁵ R.C. 961.05(B)(2)(b).

⁶ R.C. 961.01(B) and 961.04.

Under continuing law, a violation of these provisions is punishable by a fine of up to \$5,000, a year's imprisonment, or both.⁷

Scope of pet cemetery restriction

As noted above, once the restriction is recorded, the land cannot be used for any purpose besides “**pet cemetery purposes**” and purposes that are “**usual and normal for the operation of a pet cemetery.**” The bill identifies what purposes these terms include: any and all business and purposes requisite to, necessary for, or incidental to establishing, maintaining, or operating a pet cemetery, interring pet remains, and the care, preservation, and embellishment of pet cemetery property. The terms specifically include all of the following:

- Selling burial rights;
- Conducting burials and burial services;
- Maintaining grave sites;
- Maintaining cemetery common areas;
- Groundskeeping;
- Administration;
- Storage of equipment and supplies;
- Erecting, maintaining, modifying, and removing cemetery buildings.⁸

Definitions

Under existing law, “**interment**” means the disposition of pet remains by earth, entombment in a mausoleum, or inurnment in a columbarium. The bill clarifies that “interment” does not include (1) scattering ashes on the ground surface or other dispersal or (2) burial of ashes in the ground unless the ashes are in an urn or similar nondegradable container.

“**Burial right**” under existing law means the right of interment. The bill expands on this definition and defines “burial right” as an interest in land assigned or granted by a pet cemetery land owner or a pet cemetery land owner’s authorized agent to a pet owner or other member of the general public through a deed or note in writing that includes a description of the terms of the agreement and the description of the property that is being conveyed.⁹

HISTORY

Action	Date
Introduced	02-12-19

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⁷ R.C. 961.04 and 961.09; R.C. 961.02, 961.03, and 961.99, not in the bill.

⁸ R.C. 961.01(H) and 961.02.

⁹ R.C. 961.01(A) and (C).