

SENATE BILL NO. 295—SENATORS ROBERSON,
ATKINSON AND FORD

MARCH 17, 2017

Referred to Committee on Health and Human Services

SUMMARY—Revises provisions governing endowment care funds for cemeteries. (BDR 40-840)

FISCAL NOTE: Effect on Local Government: No.
Effect on the State: No.

~

EXPLANATION – Matter in *bolded italics* is new; matter between brackets ~~omitted material~~ is material to be omitted.

AN ACT relating to cemeteries; clarifying that certain cemeteries must operate as endowment care cemeteries; prescribing the frequency with which the trustee of an endowment care fund of a cemetery must make disbursements; authorizing a cemetery authority to operate an endowment care fund as a unitrust; requiring the trustee of an endowment care fund to pay all capital gains taxes imposed on the fund from the principal of the fund; providing a penalty; and providing other matters properly relating thereto.

Legislative Counsel's Digest:

With certain exceptions, existing law requires a cemetery authority to establish, maintain and operate an endowment care fund. (NRS 452.050) Existing law also requires an endowment care cemetery to meet certain requirements, including the submission of certain financial information to the Commissioner of Insurance. (NRS 452.120, 452.130, 452.150, 452.160) **Sections 2 and 13** of this bill clarify that each cemetery that is required to establish and maintain an endowment care fund is also required to operate as an endowment care cemetery and is therefore required to adhere to the requirements applicable to such a cemetery. **Sections 14 and 15** of this bill make conforming changes.

Existing law requires the principal of all funds for endowment care to be invested and only the income used for the care, maintenance and embellishment of the cemetery. (NRS 452.060, 452.160) **Section 9** of this bill requires the trustee to make monthly distributions of the income earned from an endowment care fund if no other instruction is provided by the cemetery authority. **Section 9** authorizes a cemetery authority to: (1) operate an endowment care fund as a unitrust or cease operating the fund in that manner; or (2) change the method, rate or frequency of distributions from the fund. **Section 3** of this bill defines the term "unitrust" to



* S B 2 9 5 *

mean a trust in which a certain percentage of the annually assessed fair market value of trust property is paid to a trust beneficiary. **Section 4** of this bill requires the trustee of an endowment care fund that is operating as a unitrust to adopt a written investment policy that supports the growth of the fund. **Section 4** also imposes certain limitations on the amount that can be disbursed annually from an endowment care fund that is operating as a unitrust. **Sections 8 and 10-16** of this bill make conforming changes to reflect the fact that the trustee of an endowment care fund operating as a unitrust is authorized to make disbursements from the principal of the fund. **Section 9** also requires the trustee to pay all capital gains taxes imposed on the endowment care fund from the principal of the fund.

THE PEOPLE OF THE STATE OF NEVADA, REPRESENTED IN
SENATE AND ASSEMBLY, DO ENACT AS FOLLOWS:

Section 1. Chapter 452 of NRS is hereby amended by adding thereto the provisions set forth as sections 2, 3 and 4 of this act.

Sec. 2. *“Endowment care cemetery” means a cemetery that is required by NRS 452.050 to maintain an endowment care fund or that elects, pursuant to subsection 2 of NRS 452.050, to come under the provisions of that section.*

Sec. 3. *“Unitrust” means a trust in which a certain percentage of the annually assessed fair market value of the trust property is paid to a beneficiary of the trust.*

Sec. 4. 1. *The trustee of an endowment care fund that is operating as a unitrust shall adopt a written investment policy that supports the growth of the fund.*

2. *Except as otherwise provided in subsection 4, the trustee of an endowment care fund that is operating as a unitrust may disburse to the cemetery authority during a calendar year an amount not to exceed the sum of 5 percent of the value of the endowment care fund at the beginning of the calendar year and any additional taxes or fees imposed on the distribution.*

3. *The trustee of an endowment care fund that is operating as a unitrust shall not make a disbursement to the cemetery authority from the fund if, after making the disbursement, the value of the fund would be less than 80 percent of the value of the fund at the end of the immediately preceding calendar year.*

4. *The Administrator may prohibit the trustee of an endowment care fund that is operating as a unitrust from making a disbursement to the cemetery authority or limit the amount of such a disbursement if the Administrator determines, based on the value of the fund, that the principal of the fund is not adequately protected. For the purposes of this subsection, the value of the fund must be determined at the end of the calendar year by averaging, over the preceding 3 years or during the period of the*



1 *trust's existence, whichever is less, both the income and the*
2 *principal of the trust.*

3 **Sec. 5.** NRS 452.001 is hereby amended to read as follows:

4 452.001 The provisions of NRS 452.001 to 452.610, inclusive
5 ~~†~~, *and sections 2, 3 and 4 of this act:*

6 1. Except NRS 452.002, 452.030 and 452.300, do not apply to
7 a person maintaining a cemetery but not operating as a cemetery
8 authority on July 5, 1971.

9 2. Do not apply to cemeteries containing the remains of pets
10 only.

11 **Sec. 6.** NRS 452.003 is hereby amended to read as follows:

12 452.003 As used in NRS 452.001 to 452.610, inclusive, *and*
13 *sections 2, 3 and 4 of this act*, unless the context otherwise requires,
14 the words and terms defined in NRS 452.004 to 452.019, inclusive,
15 *and sections 2 and 3 of this act* have the meanings ascribed to them
16 in those sections.

17 **Sec. 7.** NRS 452.025 is hereby amended to read as follows:

18 452.025 The Administrator may adopt such regulations as may
19 be necessary to carry out the purposes and provisions of NRS
20 452.001 to 452.610, inclusive, *and sections 2, 3 and 4 of this act*,
21 which relate to endowment care.

22 **Sec. 8.** NRS 452.050 is hereby amended to read as follows:

23 452.050 1. Every cemetery authority operating a cemetery
24 which is not exempt pursuant to subsection 2 shall place its
25 cemetery under endowment care and establish, maintain and operate
26 an endowment care fund after having first applied for and received a
27 permit from the Administrator.

28 2. A cemetery is exempt from the provisions of subsection 1 if:

29 (a) It was maintained as a cemetery on July 1, 1971; or

30 (b) It is owned and operated by a governmental agency, church
31 or benevolent or fraternal organization not operated for profit.

32 ➔ Nothing contained in this subsection shall prohibit any
33 cemetery authority from electing to come under the provisions of
34 subsection 1.

35 3. Endowment care *funds* and special care funds may be
36 commingled for investment and the ~~income~~ *money disbursed*
37 therefrom ~~shall~~ *must* be divided between the endowment care
38 *funds* and special care funds in the proportion that each fund
39 contributed to the principal sum invested. The funds ~~shall~~ *must* be
40 held in the name of the cemetery authority.

41 **Sec. 9.** NRS 452.060 is hereby amended to read as follows:

42 452.060 1. The principal of all funds for endowment care
43 ~~shall~~ *must* be invested and the ~~income-only~~ *money disbursed*
44 *from an endowment care fund must be* used for the care,
45 maintenance and embellishment of the cemetery, in accordance with



* S B 2 9 5 *

1 the provisions of law and the resolutions, bylaws, rules and
2 regulations or other actions or instruments of the cemetery authority,
3 and for no other purpose. Endowment *care funds* and special care
4 funds ~~shall~~ *must* be maintained separate and distinct from all other
5 funds and the trustees shall keep separate records thereof.

6 2. The trustee of the endowment care fund shall ~~create~~ :

7 (a) *Create* a reserve from which principal losses may be
8 replaced by setting aside a reasonable percentage of the income
9 from the fund.

10 (b) *Except as otherwise provided in subsection 3, make*
11 *monthly disbursements of the income earned from the fund to the*
12 *cemetery authority.*

13 (c) *Pay all capital gains taxes imposed on the fund from the*
14 *principal of the fund.*

15 3. *On January 1 of any calendar year, a cemetery authority*
16 *may, by giving written notice to the trustee of the endowment care*
17 *fund and the Administrator of its intention to do so at least 30 days*
18 *before that date:*

19 (a) *Operate the fund as a unitrust subject to the provisions of*
20 *section 4 of this act or cease operating the fund in that manner;*

21 (b) *Change the method or rate of disbursements from the*
22 *fund; or*

23 (c) *Change the frequency of disbursements from the fund.*
24 *Money may be disbursed from an endowment care fund to the*
25 *cemetery authority on a monthly, quarterly, semiannual or annual*
26 *basis.*

27 **Sec. 10.** NRS 452.070 is hereby amended to read as follows:

28 452.070 The cemetery authority may from time to time adopt
29 plans for the general care, maintenance and embellishment of its
30 cemetery, and charge and collect from all subsequent purchasers of
31 plots such reasonable ~~sum~~ *sums* as, in the judgment of the
32 cemetery authority, will aggregate a fund ~~the reasonable income~~
33 ~~from~~ , *the money disbursed from* which will provide care,
34 maintenance and embellishment.

35 **Sec. 11.** NRS 452.080 is hereby amended to read as follows:

36 452.080 Upon payment of the purchase price and the amount
37 fixed as a proportionate contribution for endowment care, there may
38 be included in the deed of conveyance or by separate instrument an
39 agreement to use the ~~income~~ *money disbursed* from such
40 endowment care fund for the care, maintenance and embellishment,
41 in accordance with the plan adopted, of the cemetery and its
42 appurtenances to the proportionate extent the income received by
43 the cemetery authority from the contribution will permit.



Sec. 12. NRS 452.090 is hereby amended to read as follows:

452.090 Upon the application of an owner of any plot, and upon the payment by the owner of the amount fixed as a reasonable and proportionate contribution for endowment care a cemetery authority may enter into an agreement with the owner to use the ~~income~~ *money disbursed* from such fund for the care of his or her plot and its appurtenances.

Sec. 13. NRS 452.120 is hereby amended to read as follows:

452.120 ~~{1.}~~ An ~~“endowment care cemetery” is one which must have deposited~~ *endowment care cemetery shall deposit* in its endowment care fund, no later than 30 days following the end of the month in which the final payment is received for the sale of a grave, lawn crypt space, niche or mausoleum crypt, not less than the following amounts for interment spaces and memorial markers and monuments sold or disposed of:

~~{(a)}~~ *1.* Five dollars per square foot for each grave space.

~~{(b)}~~ *2.* Five dollars per square foot for each lawn crypt space.

~~{(c)}~~ *3.* Forty dollars for each single niche in a columbarium or mausoleum.

~~{(d)}~~ *4.* One hundred twenty-five dollars for each single adult mausoleum crypt.

~~{(e)}~~ *5.* One hundred twenty-five dollars for the first adult crypt of a tandem companion mausoleum crypt.

~~{(f)}~~ *6.* One hundred dollars for each additional crypt of a tandem companion mausoleum crypt.

~~{(g)}~~ *7.* Sixty dollars for each mausoleum crypt which is less than one-half the size of an adult crypt as measured in cubic feet.

~~{(h)}~~ *8.* A sum equal to 20 percent of the cost of each privately built mausoleum crypt.

~~{(i)}~~ *9.* Ten dollars per square foot for each lawn space niche.

~~{(j)}~~ *10.* Twelve cents per square inch of top surface face for each memorial marker and for each foundation for an upright monument.

~~{(k)}~~ *11.* Twelve cents per square inch of top surface face for each memorial lawn niche marker.

~~{2.} The deposits required by subsection 1 must be made not later than 30 days after the end of the month in which the final payment for any grave, lawn crypt space, niche or crypt is made.~~

Sec. 14. NRS 452.140 is hereby amended to read as follows:

452.140 1. ~~{A “nonendowment care cemetery” is one that does not comply with the provisions of NRS 452.120 and 452.130.~~

~~—2.}~~ A cemetery which otherwise complies with NRS 452.120 may be designated an endowment care cemetery even though it contains a small section which may be sold without endowment care, if the section is separately set off from the remainder of the



1 cemetery and if signs are kept prominently placed around the
2 section designating the same as a "Nonendowment care section" in
3 legible black lettering at least 4 inches high. There shall be printed
4 at the head of all contracts, agreements, statements, receipts and
5 certificates of ownership or deeds referring to plots in the section the
6 phrase "Nonendowment care."

7 ~~13-1~~ 2. Subsection ~~12-1~~ 1 applies only to cemeteries existing on
8 July 1, 1971.

9 **Sec. 15.** NRS 452.150 is hereby amended to read as follows:

10 452.150 1. Each endowment care cemetery shall post in a
11 conspicuous place in the office or offices where sales are conducted
12 and in a conspicuous place at or near the entrance of the cemetery or
13 its administration building and readily accessible to the public, a
14 legible sign which shall contain the following information in the
15 order and manner set forth below:

16 (a) A heading containing the words "Endowment care," which
17 shall appear in a minimum of 48-point black type.

18 (b) This is an endowment care interment property.

19 2. Each nonendowment care cemetery shall post in a
20 conspicuous place in the office or offices where sales are conducted
21 and in a conspicuous place at or near the entrance of the cemetery or
22 its administration building and readily accessible to the public, a
23 legible sign which shall contain the following information in the
24 order and manner set forth below:

25 (a) A heading containing the words "Nonendowment care."

26 (b) This is a nonendowment care interment property.

27 3. There shall be printed at the head of all contracts,
28 agreements, statements, receipts, literature and other publications of
29 nonendowment care cemeteries the following: "This institution is
30 operated as a 'nonendowment care' interment property."

31 4. All the information appearing on the signs and report filed in
32 the cemetery office shall be revised annually and verified by the
33 president and secretary, or two officers authorized by the cemetery
34 authority.

35 5. *As used in this section, "nonendowment care cemetery"*
36 *means a cemetery that is not required by NRS 452.050 to establish*
37 *and maintain an endowment care fund and does not elect,*
38 *pursuant to subsection 2 of NRS 452.050, to come under the*
39 *provisions of that section.*

40 **Sec. 16.** NRS 452.160 is hereby amended to read as follows:

41 452.160 1. Endowment care funds must not be used for any
42 purpose other than to provide ~~1, through income only, 1~~ for the
43 reserves authorized by law and for the endowment care of the
44 cemetery in accordance with the resolutions, bylaws, rules and
45 regulations or other actions or instruments of the cemetery authority.



- 1 2. The funds must be invested and reinvested in:
- 2 (a) Bonds of the United States;
- 3 (b) Bonds of this state or the bonds of other states;
- 4 (c) Bonds of counties or municipalities of any state;
- 5 (d) With the approval of the Administrator, first mortgages or
- 6 first trust deeds on improved real estate;
- 7 (e) Deposits in any bank, credit union or savings and loan
- 8 association that is federally insured or insured by a private insurer
- 9 approved pursuant to NRS 678.755; or
- 10 (f) With the written approval of the Administrator, any
- 11 investment which would be proper under the provisions of NRS
- 12 164.700 to 164.775, inclusive.

13 ➔ Pending investment as provided in this subsection, such funds
14 may be deposited in an account in any savings bank, credit union or
15 savings and loan association which is qualified to do business in the
16 State of Nevada and which is federally insured or insured by a
17 private insurer approved pursuant to NRS 678.755.

18 3. Each cemetery authority operating an endowment care
19 cemetery shall submit to the Administrator annually, on a form
20 prescribed and adopted by the Administrator, a financial statement
21 of the condition of its endowment care fund. The statement must be
22 accompanied by a fee of \$10. If the statement is not received by the
23 Administrator, he or she may, after giving 10 days' notice, revoke
24 the cemetery authority's certificate of authority.

25 **Sec. 17.** NRS 452.180 is hereby amended to read as follows:

26 452.180 1. It is unlawful for a cemetery authority, its
27 officers, employees or agents, or a seller or agent certified or
28 licensed pursuant to NRS 689.450 to 689.595, inclusive, to
29 represent that an endowment care fund or any other fund set up for
30 maintaining care is perpetual or permanent, or to sell, offer for sale
31 or advertise any plot under representation that the plot is under
32 endowment care, before an endowment care fund has been
33 established for the cemetery in which the plot is situated. Any
34 person violating any of the provisions of NRS 452.050 to 452.180,
35 inclusive, *and section 4 of this act* is personally liable for all
36 damages resulting to any person by reason of such violation, and
37 upon conviction thereof is guilty of a misdemeanor.

38 2. The Administrator, for the purpose of ascertaining the assets,
39 conditions and affairs of any endowment care cemetery, may
40 examine the books, records, documents and assets of any
41 endowment care cemetery operating, or being organized to operate
42 as such a cemetery, in the State of Nevada, and may make whatever
43 other investigations as may be necessary to determine that the
44 cemetery is complying fully with the provisions of NRS 452.050 to
45 452.180, inclusive **H**, *and section 4 of this act*.



1 3. If, after an examination or investigation, the Administrator
2 has just cause to believe that a cemetery granted a permit under the
3 provisions of NRS 452.050 to 452.180, inclusive, *and section 4 of*
4 *this act* has failed to comply with the provisions and requirements
5 of NRS 452.050 to 452.180, inclusive, *and section 4 of this act*, and
6 any regulations adopted thereunder, the Administrator may, after
7 due notice and hearing, if the Administrator finds that the cemetery
8 authority has violated those requirements or regulations, revoke or
9 refuse to renew the permit of that cemetery authority and refer the
10 violation to the Attorney General to determine if further action
11 should be taken under subsection 1.

12 4. The provisions of NRS 679B.230 to 679B.300, inclusive,
13 apply to any examination conducted under this section. Unless the
14 context requires that a provision apply only to insurers, any
15 reference in those sections to “insurer” must be replaced by a
16 reference to “cemetery authority” or the person being examined.

17 **Sec. 18.** NRS 452.610 is hereby amended to read as follows:

18 452.610 In addition to any other penalty provided for in NRS
19 452.001 to 452.610, inclusive, *and sections 2, 3 and 4 of this act*,
20 any person who violates any provision of NRS 452.001 to 452.610,
21 inclusive, *and sections 2, 3 and 4 of this act*, or any regulation
22 adopted or administrative order entered pursuant to those sections,
23 for which a greater penalty is not otherwise provided by law, is
24 guilty of a misdemeanor.

