

Senate Bill No. 295–Senators Roberson,
Atkinson and Ford

CHAPTER.....

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 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 trust’s existence, whichever is less, both the income and the principal of the trust.

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

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



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

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

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

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

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

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

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

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

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

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

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

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

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

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

452.060 1. The principal of all funds for endowment care ~~shall~~ *must* be invested and the ~~income-only~~ *money disbursed from an endowment care fund must be* used for the care, maintenance and embellishment of the cemetery, in accordance with the provisions of law and the resolutions, bylaws, rules and regulations or other actions or instruments of the cemetery authority, and for no other purpose. Endowment *care funds* and special care



funds ~~shall~~ **must** be maintained separate and distinct from all other funds and the trustees shall keep separate records thereof.

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

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

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

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

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

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

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

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

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

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

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

452.080 Upon payment of the purchase price and the amount fixed as a proportionate contribution for endowment care, there may be included in the deed of conveyance or by separate instrument an agreement to use the ~~income~~ **money disbursed** from such endowment care fund for the care, maintenance and embellishment, in accordance with the plan adopted, of the cemetery and its appurtenances to the proportionate extent the income received by 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 cemetery and if signs are kept prominently placed around the



section designating the same as a “Nonendowment care section” in legible black lettering at least 4 inches high. There shall be printed at the head of all contracts, agreements, statements, receipts and certificates of ownership or deeds referring to plots in the section the phrase “Nonendowment care.”

~~§~~ 2. Subsection ~~§~~ 1 applies only to cemeteries existing on July 1, 1971.

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

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

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

(b) This is an endowment care interment property.

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

(a) A heading containing the words “Nonendowment care.”

(b) This is a nonendowment care interment property.

3. There shall be printed at the head of all contracts, agreements, statements, receipts, literature and other publications of nonendowment care cemeteries the following: “This institution is operated as a ‘nonendowment care’ interment property.”

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

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

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

452.160 1. Endowment care funds must not be used for any purpose other than to provide ~~§, through income only,§~~ for the reserves authorized by law and for the endowment care of the



cemetery in accordance with the resolutions, bylaws, rules and regulations or other actions or instruments of the cemetery authority.

2. The funds must be invested and reinvested in:

(a) Bonds of the United States;

(b) Bonds of this state or the bonds of other states;

(c) Bonds of counties or municipalities of any state;

(d) With the approval of the Administrator, first mortgages or first trust deeds on improved real estate;

(e) Deposits in any bank, credit union or savings and loan association that is federally insured or insured by a private insurer approved pursuant to NRS 678.755; or

(f) With the written approval of the Administrator, any investment which would be proper under the provisions of NRS 164.700 to 164.775, inclusive.

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

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

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

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

2. The Administrator, for the purpose of ascertaining the assets, conditions and affairs of any endowment care cemetery, may examine the books, records, documents and assets of any endowment care cemetery operating, or being organized to operate



as such a cemetery, in the State of Nevada, and may make whatever other investigations as may be necessary to determine that the cemetery is complying fully with the provisions of NRS 452.050 to 452.180, inclusive ~~†~~, *and section 4 of this act.*

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

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

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

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

