

**ENDOWMENT CARE CEMETERY AMENDMENTS**

1998 GENERAL SESSION

STATE OF UTAH

**Sponsor: John W. Hickman**

AN ACT RELATING TO CEMETERIES; MODIFYING PROVISIONS FOR ESTABLISHING  
ENDOWMENT CARE CEMETERIES; AMENDING REQUIREMENTS FOR INITIAL  
DEPOSITS INTO AND WITHDRAWALS FROM ENDOWMENT CARE CEMETERY  
TRUST FUNDS; REPEALING THE PROHIBITION THAT A PERSON MAY NOT OWN  
OR OPERATE AN ENDOWMENT CARE CEMETERY EXCEPT FOR AN ENDOWMENT  
CARE CEMETERY OPERATING ON OR BEFORE MAY 1, 1996; AND MAKING  
TECHNICAL CORRECTIONS.

This act affects sections of Utah Code Annotated 1953 as follows:

AMENDS:

**8-4-2**, as last amended by Chapter 3, Laws of Utah 1996

**8-4-3**, as last amended by Chapter 3, Laws of Utah 1996

REPEALS:

**8-4-12**, as enacted by Chapter 3, Laws of Utah 1996

*Be it enacted by the Legislature of the state of Utah:*

Section 1. Section **8-4-2** is amended to read:

**8-4-2. Endowment care cemetery trust funds -- Deposits in endowment fund --  
Reports -- Penalties for failure to file -- Investment of trust fund monies -- Attestation.**

(1) (a) An endowment care cemetery shall establish an endowment care trust fund pursuant  
to Title 75, Chapter 7, Trust Administration.

~~[(a) Any newly established endowment care cemetery or existing cemetery converting to  
an endowment care cemetery shall deposit a minimum of \$50,000 in the endowment care trust  
fund.]~~

(b) After May 4, 1998, any newly established endowment care cemetery or existing

1 cemetery converting to an endowment care cemetery shall deposit a minimum of \$100,000 in the  
2 endowment care trust fund.

3           ~~[(b)]~~ (c) Each endowment care cemetery shall deposit in the endowment care trust fund  
4 for each plot space sold or disposed of a minimum of:

- 5           (i) \$1.50 a square foot for each grave;
- 6           (ii) \$15 for each niche; and
- 7           (iii) \$60 for each crypt.

8           (2) (a) An endowment care cemetery shall collect endowment care funds only pursuant  
9 to a written contract of sale signed by the endowment care cemetery and the purchaser. The  
10 contract of sale shall specify the terms of the endowment care trust consistent with this section and  
11 the terms of payment.

12           (b) If requested by the purchaser, a copy of the endowment care trust shall be provided to  
13 the purchaser.

14           (3) (a) Each endowment care cemetery shall prepare an annual written report for the  
15 benefit of its trustor lot holders.

16           (b) The report shall contain:

17           (i) information determined to be reasonable and necessary to show compliance with the  
18 provisions of this chapter;

19           (ii) the number and square feet of grave space;

20           (iii) the number of crypts and niches sold or disposed of under endowment care during a  
21 specific period; and

22           (iv) the dollar amount of sales, amounts paid, amounts receivable, and amounts deposited  
23 in endowment care funds for crypts, niches, and grave space during a specific period, set forth on  
24 the accrual basis as determined by the cemetery authority.

25           (c) An officer of the endowment care cemetery authority shall verify the report.

26           (d) The report shall be on file in the principal office of the endowment care cemetery and  
27 shall be made available upon request.

28           (e) The report shall be completed by the 15th day of the third month following the end of  
29 the endowment care cemetery's fiscal year.

30           (4) An officer, director, partner, proprietor, or other person having control of the records  
31 of an endowment care cemetery shall provide the reports and records necessary to comply with the

1 provisions of this chapter.

2 (5) A person is guilty of a class A misdemeanor who willfully and intentionally fails to:

3 (a) deposit funds collected as endowment care funds into the endowment care trust within  
4 30 days of receipt of the funds; or

5 (b) prepare the report required by Subsection (3).

6 (6) Endowment care funds may be invested separately or together. The investment income  
7 shall be divided between the funds in the proportion that each contributed to the invested amount.

8 (7) Endowment care funds shall be invested in accordance with Section 31A-18-105 and  
9 Title 75, Chapter 7, Trust Administration.

10 (8) (a) An endowment care cemetery shall place endowment care funds with an  
11 independent trustee appointed by the endowment care cemetery.

12 (b) A trustee may be independent even if it has common ownership with the cemetery.

13 (c) The independent trustee shall be a depository institution, as defined by Section  
14 7-1-103, or an insurer, as defined in Section 31A-1-301.

15 (9) (a) The trustee shall submit to the endowment care cemetery an annual independent  
16 attestation of the endowment care trust funds.

17 (b) The attestation shall state:

18 (i) the total amount of the general and special endowment care funds invested by law;

19 (ii) the amount of cash on hand not invested;

20 (iii) the location, description, and character of the investments in which the special  
21 endowment care funds are invested;

22 (iv) the value of any securities held in the endowment care fund; and

23 (v) the actual financial condition of the funds.

24 (10) (a) A trustee may not receive compensation for services and expenses, including  
25 audits, in excess of 5% of the income derived from an endowment care fund in any year.

26 (b) If there are insufficient funds from the income derived from the endowment care trust  
27 fund to pay for the attestation of the endowment care funds, the endowment care cemetery shall  
28 pay amounts due from funds other than the endowment care trust fund or income derived from that  
29 fund.

30 (11) The income from an endowment care fund shall be used for the care, maintenance,  
31 and embellishment of the cemetery as determined by the endowment care cemetery, and to pay for

1 administering the fund.

2 Section 2. Section **8-4-3** is amended to read:

3 **8-4-3. Withdrawals from endowment fund.**

4 (1) The endowment care fund established for any cemetery with an initial deposit of  
5 \$50,000 shall remain irrevocable until the fund balance is \$100,000. When the fund balance is  
6 \$100,000, the initial deposit required in Subsection 8-4-2(1)[(a)](b) may be withdrawn at the rate  
7 of \$1,000 for each additional \$3,000 added to the fund.

8 (2) If an endowment care fund has been established before July 1, 1983, with an initial  
9 deposit of \$25,000, this deposit may be withdrawn by the cemetery authority after the fund balance  
10 has reached \$50,000 at the rate of \$1,000 for each additional \$3,000 added to the fund.

11 (3) If an endowment care fund has been established after May 4, 1998, with an initial  
12 deposit of \$100,000, this deposit may be withdrawn by the cemetery authority after the fund  
13 balance has reached \$200,000 at the rate of \$1,000 for each additional \$3,000 added to the fund.

14 Section 3. **Repealer.**

15 This act repeals:

16 Section **8-4-12, Endowment care cemetery prohibited.**

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**Legislative Review Note**  
**as of 2-2-98 5:22 PM**

A limited legal review of this bill raises no obvious constitutional or statutory concerns.

**Office of Legislative Research and General Counsel**