

ENDOWMENT CARE CEMETERY AMENDMENTS

2000 GENERAL SESSION

STATE OF UTAH

Sponsor: Lorin V. Jones

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 CERTAIN PROHIBITIONS ON OWNING AND OPERATING AN
ENDOWMENT CARE CEMETERY; 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) An endowment care cemetery shall establish an endowment care trust fund pursuant
to Title 75, Chapter 7, Trust Administration.

(a) [~~Any~~] After May 1, 2000, any newly established endowment care cemetery or existing
cemetery converting to an endowment care cemetery shall deposit a minimum of [~~\$50,000~~]
\$100,000 in the endowment care trust fund.

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

(i) \$1.50 a square foot for each grave;

28 (ii) \$15 for each niche; and

29 (iii) \$60 for each crypt.

30 (2) (a) An endowment care cemetery shall collect endowment care funds only pursuant to
31 a written contract of sale signed by the endowment care cemetery and the purchaser.

32 (b) The contract of sale shall specify the terms of the endowment care trust consistent with
33 this section and the terms of payment.

34 ~~[(b)]~~ (c) If requested by the purchaser, a copy of the endowment care trust shall be
35 provided to the purchaser.

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

38 (b) The report shall contain:

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

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

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

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

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

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

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

52 (4) An officer, director, partner, proprietor, or other person having control of the records
53 of an endowment care cemetery shall provide the reports and records necessary to comply with the
54 provisions of this chapter.

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

56 (a) deposit funds collected as endowment care funds into the endowment care trust within
57 30 days of receipt of the funds; or

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

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

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

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

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

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

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

70 (b) The attestation shall state:

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

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

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

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

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

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

79 (b) If there are insufficient funds from the income derived from the endowment care trust
80 fund to pay for the attestation of the endowment care funds, the endowment care cemetery shall
81 pay amounts due from funds other than the endowment care trust fund or income derived from that
82 fund.

83 (11) The income from an endowment care fund shall be used for the care, maintenance,
84 and embellishment of the cemetery as determined by the endowment care cemetery, and to pay for
85 administering the fund.

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

87 **8-4-3. Withdrawals from endowment fund.**

88 [~~(1) The endowment care fund established for any cemetery shall remain irrevocable until~~
89 ~~the fund balance is \$100,000. When the fund balance is \$100,000, the initial deposit required in~~

90 Subsection 8-4-2(1)(a) may be withdrawn at the rate of \$1,000 for each additional \$3,000 added
91 to the fund.]

92 ~~[(2) If]~~ (1) For an endowment care fund [has been] that was established before July 1,
93 1983[;] with an initial deposit of \$25,000, [this deposit may be withdrawn by the cemetery
94 authority after] when the fund balance [has reached] reaches \$50,000, the cemetery authority may
95 withdraw the deposit at the rate of \$1,000 for each additional \$3,000 added to the fund.

96 (2) For an endowment care fund that was established on or after July 1, 1983, but before
97 May 2, 2000, with an initial deposit of \$50,000, when the fund balance reaches \$100,000, the
98 cemetery authority may withdraw the deposit at the rate of \$1,000 for each additional \$3,000 added
99 to the fund.

100 (3) For an endowment care fund that is established after May 1, 2000 with an initial
101 deposit of \$100,000, when the fund balance reaches \$200,000, the cemetery authority may
102 withdraw the deposit at the rate of \$1,000 for each additional \$3,000 added to the fund.

103 Section 3. **Repealer.**

104 This act repeals:

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

Legislative Review Note
as of 1-10-00 10:52 AM

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

Office of Legislative Research and General Counsel