

**First Regular Session
Seventy-first General Assembly
STATE OF COLORADO**

ENGROSSED

*This Version Includes All Amendments Adopted
on Second Reading in the House of Introduction*

LLS NO. 17-0239.01 Ed DeCecco x4216

HOUSE BILL 17-1244

HOUSE SPONSORSHIP

Herod, Foote, Lee, Willett, Wist

SENATE SPONSORSHIP

Gardner, Cooke, Guzman, Holbert, Kagan

House Committees
Judiciary

Senate Committees

A BILL FOR AN ACT

101 **CONCERNING THE NONSUBSTANTIVE RELOCATION OF THE LAWS**
102 **RELATED TO CEMETERIES FROM TITLE 12, COLORADO REVISED**
103 **STATUTES, AS PART OF THE ORGANIZATIONAL RECODIFICATION**
104 **OF TITLE 12.**

Bill Summary

(Note: This summary applies to this bill as introduced and does not reflect any amendments that may be subsequently adopted. If this bill passes third reading in the house of introduction, a bill summary that applies to the reengrossed version of this bill will be available at <http://leg.colorado.gov/>.)

Committee on Legal Services. Current law directs the Office of Legislative Legal Services to study the organizational recodification of title 12, Colorado Revised Statutes, which relates to professions and

Shading denotes HOUSE amendment. Double underlining denotes SENATE amendment.
Capital letters indicate new material to be added to existing statute.
Dashes through the words indicate deletions from existing statute.

HOUSE
2nd Reading Unamended
April 3, 2017

occupations. To implement the initial recommendations of the study, **section 1** of the bill relocates article 12 of title 12, which relates to cemeteries, to title 6.

Section 4 repeals the article where this law was previously codified, and **sections 2 and 3** make conforming amendments.

1 *Be it enacted by the General Assembly of the State of Colorado:*

2 **SECTION 1.** In Colorado Revised Statutes, **add with amended**
3 **and relocated provisions** article 23 to title 6 as follows:

4 **ARTICLE 23**

5 **Cemeteries**

6 **6-23-101. [Formerly 12-12-101] Definitions.** As used in this
7 ~~article~~ ARTICLE 23, unless the context otherwise requires:

8 (1) "Burial memorial" means any type of gravestone, tombstone,
9 headstone, memorial, monument, or marker that commemorates the
10 permanent disposition of the remains of a human body either below or
11 above the surface of the ground.

12 ~~(1.5)~~ (2) "Cemetery" means any place, including a mausoleum, in
13 which there is provided space either below or above the surface of the
14 ground for the interment of the remains of human bodies. "Cemetery"
15 does not include a cemetery that is owned, operated, or maintained by a
16 government or governmental agency, by a church or synagogue, by a
17 labor organization, by a cooperative association as defined in section
18 7-55-101, ~~C.R.S.~~, by a corporation organized and operated exclusively for
19 religious purposes, or by a fraternal society, order, or association
20 operating under the lodge system and exempt from the payment of state
21 income tax and that has as its main business something other than the
22 ownership, operation, or maintenance of any business connected with the
23 burial of the dead.

1 ~~(2)~~ (3) "Cemetery authority" means any person who owns,
2 maintains, or operates a cemetery.

3 ~~(2.5) Repealed.~~

4 ~~(3)~~ (4) "Endowment care cemetery" means any cemetery, the
5 authority of which does, or represents to the public that it does, collect
6 funds for the purpose of caring for, maintaining, or embellishing the
7 cemetery to preserve it from becoming unkempt or a place of reproach
8 and desolation. It does not include a cemetery which is owned, operated,
9 or maintained by a government or governmental agency, by a church, by
10 a labor organization, by a cooperative association as defined in section
11 7-55-101, ~~C.R.S.~~, by a corporation organized and operated exclusively for
12 religious purposes, or by a fraternal society, order, or association
13 operating under the lodge system and exempt from the payment of state
14 income tax and which has as its main purpose something other than the
15 ownership, operation, or maintenance of any business connected with
16 burial of the dead.

17 ~~(4)~~ (5) "Grave space" means any space in the ground for the
18 interment of the remains of a human body.

19 ~~(4.5)~~ (6) "Inscription" means any words or symbols on a burial
20 memorial.

21 ~~(5)~~ (7) "Interment" means the permanent disposition of the
22 remains of a deceased person by cremation, inurnment, entombment, or
23 burial.

24 ~~(6)~~ (8) "Niche" or "crypt" means a space in any structure above
25 the ground for the interment of the remains of a human body.

26 ~~(7)~~ (9) "Nonendowment care cemetery" means any cemetery other
27 than an endowment care cemetery.

1 ~~(8)~~ (10) "Person" means a person as defined by section 2-4-401
2 (8). ~~C.R.S.~~

3 **6-23-102. [Formerly 12-12-103] Organization as endowment**
4 **care cemetery - when.** Any person who, after July 1, 1965, establishes
5 or acquires a cemetery within twenty miles from the exterior boundary of
6 any city with a population of five thousand or more, according to the
7 latest federal decennial census, shall be organized as an endowment care
8 cemetery.

9 **6-23-103. [Formerly 12-12-104] Nonendowment section in**
10 **endowment care cemetery.** Any cemetery authority of an endowment
11 care cemetery ~~which~~ THAT has a nonendowed section that is used only as
12 single graves for indigents may continue to donate ~~said~~ THE graves for the
13 burial of indigents. Nothing in this article shall be construed to prevent a
14 cemetery authority of an endowed care cemetery from donating ~~such~~ a
15 grave space for the burial of an indigent person without placing money in
16 the endowment care fund for ~~such~~ THE space.

17 **6-23-104. [Formerly 12-12-105] Acquisition of land.** Any
18 cemetery authority may acquire suitable and sufficient land for a cemetery
19 in a manner provided by articles 1 to 7 of title 38. ~~C.R.S.~~

20 **6-23-105. [Formerly 12-12-106] Plats of land to be recorded.**
21 Any cemetery authority shall cause its land or ~~such~~ THE portion thereof
22 as may become necessary for that purpose to be surveyed into blocks,
23 lots, avenues, and walks and platted. The plat of ground as surveyed shall
24 be acknowledged by some officer of the cemetery authority and filed for
25 record in the office of the clerk and recorder of the county in which the
26 land is situated. Each block or lot shall be regularly numbered by the
27 surveyor, and ~~such~~ THE numbers shall be marked on the plat.

1 **6-23-106. [Formerly 12-12-109] Endowment care fund.** (1) A
2 cemetery authority of an endowment care cemetery shall establish an
3 irrevocable endowment care fund for each endowment care cemetery
4 owned, maintained, or operated by it in a state bank or trust company
5 authorized to act as fiduciary and under the supervision of the banking
6 board or in a national banking association authorized to act as fiduciary
7 or in a state or federally chartered savings and loan association authorized
8 to act as a fiduciary. ~~Such~~ THE endowment care fund shall be invested in
9 investments lawful for trustees, which shall not include investments in
10 nor mortgages on property owned or contracted for by the cemetery
11 authority or any owned or affiliated company.

12 (2) (a) A cemetery authority of an endowment care cemetery shall
13 make deposits in the endowment care fund or, if it operates more than one
14 endowment care fund, in the appropriate endowment care fund, in
15 accordance with one of the following plans:

16 (I) Plan A:

17 It shall deposit in ~~such~~ THE fund not more than thirty days after any
18 sale is completed at least fifteen percent of the sales price of any grave
19 space and at least ten percent of the sales price of any crypt or niche, and
20 in case any sale has not been completed within sixty months after date of
21 first payment, it shall deposit in ~~such~~ THE fund, not later than one month
22 after the sixtieth month, at least fifteen percent of the sales price of any
23 grave space and at least ten percent of the sales price of any crypt or
24 niche. A sale is completed at the time the final payment is made and no
25 balance remains due to the cemetery authority, whether or not a deed has
26 been issued. If a contract of sale is rewritten, the date of the first payment
27 under the original contract of sale shall be the date of first payment under

1 the rewritten contract of sale.

2 (II) Plan B:

3 It shall deposit, not later than thirty days after the end of the fiscal
4 year in which ~~such~~ THE payments are received, fifteen percent of all
5 payments received on account of the sale of any grave space and at least
6 ten percent of all payments received on account of the sale of a niche or
7 crypt. This deposit requirement applies to all uncompleted sales contracts
8 ~~which~~ THAT carry an endowment care provision.

9 (III) Plan C: (applicable only to sale of niches or crypts in a
10 mausoleum)

11 It shall deposit in its endowment care fund for ~~such~~ THE
12 mausoleum, not later than thirteen months after the end of its fiscal year
13 in which any sale is completed, at least ten percent of the sale price of any
14 niche or crypt, and in case any sale has not been completed within
15 twenty-four months after date of first payment, it shall deposit in ~~such~~
16 THE fund, not later than one month after the end of its fiscal year in which
17 the last day of ~~such~~ THE twenty-four month period occurs, at least ten
18 percent of the sales price of any niche or crypt. A sale is completed at the
19 time the final payment is made and no balance remains due to the
20 cemetery authority, whether or not a deed has been issued. If a contract
21 of sale is rewritten, the date of first payment under the original contract
22 of sale shall be the date of first payment under the rewritten contract of
23 sale.

24 (b) As to any endowment care cemetery in operation on July 1,
25 1965, this subsection (2) shall only apply to all sales contracts entered
26 into on or after ~~said~~ THE date.

27 (3) (a) The cemetery authority of an endowment care cemetery,

1 before commencing operation, on or after July 1, 1965, shall have on
2 deposit in the endowment care fund a sum in accordance with the
3 following scale:

4	For 10,000 or less population	\$10,000
5	For more than 10,000 but less than 20,000	
6	population	\$15,000
7	For 20,000 but less than 25,000 population	\$20,000
8	For 25,000 or more population	\$25,000

9 (b) "Population" means the people residing within a twenty-mile
10 radius of the location of the endowment care cemetery, the population
11 figure to be taken from the latest federal decennial census.

12 (c) The cemetery authority for ~~such~~ THE endowment care cemetery
13 shall thereafter make deposits in accordance with subsection (2) of this
14 section. When ~~such~~ THE deposits have reached twice the amount stated in
15 the above table, the cemetery authority may withdraw the sum of the
16 initial deposit in amounts equal to the amounts deposited thereafter until
17 the initial deposit has been withdrawn.

18 (4) A cemetery authority of a nonendowment care cemetery which
19 converts to operation as an endowment care cemetery on or after July 1,
20 1965, shall deposit in its endowment care fund the sum of ten thousand
21 dollars before making any further sale of any grave space or niche or
22 crypt. The cemetery authority for ~~such~~ THE cemetery shall thereafter make
23 deposits in accordance with subsection (2) of this section until total
24 deposits into the endowment care fund have reached twenty thousand
25 dollars. It may thereafter withdraw from the initial ten thousand dollar
26 deposit amounts equal to the amounts of deposits thereafter made until
27 the entire ten thousand dollar initial deposit has been withdrawn and

1 replaced by deposits in accordance with subsection (2) of this section.

2 (5) The cemetery authority of an endowment care cemetery that
3 constructs foundations for the setting of markers or memorials and
4 receives payment for the care of ~~such~~ THE markers or memorials as part
5 of the cost of foundation construction, setting charges, or itemized
6 endowment requirements shall deposit all of ~~said~~ THE care payments in
7 their irrevocable endowment care fund not later than one month after the
8 end of its fiscal year in which ~~such~~ THE payments are received.

9 (6) The cemetery authority of an endowment care cemetery shall
10 keep in its principal office a copy of the report referred to in ~~section~~
11 ~~12-12-110~~ SECTION 6-23-107, which shall be available to any grave space,
12 niche, or crypt owner or his OR HER duly authorized representative for
13 inspection and study.

14 (7) The endowment care fund, for all purposes, shall constitute a
15 nonprofit irrevocable trust fund. Endowment care is a provision for the
16 benefit and protection of the public by preserving and keeping cemeteries
17 from becoming unkempt and places of reproach and desolation in the
18 communities in which they are situated. The income and increments and
19 gains from ~~such~~ THE funds are for the benefit of the public for the
20 purposes provided for in ~~such~~ THE trusts.

21 **6-23-107. [Formerly 12-12-110] Reports.** (1) Each cemetery
22 authority shall keep on file annually, within three months after the end of
23 its fiscal year, a written report setting forth:

24 (a) The total amount deposited in the endowment care fund, listing
25 separately the total amounts paid for endowment of grave spaces, for
26 niches, and for crypts, in accordance with the provisions of ~~section~~
27 ~~12-12-109~~ SECTION 6-23-106;

1 (b) The total amount of endowment care funds invested in each of
2 the investments authorized by law and the amount of cash on hand not
3 invested;

4 (c) Any other facts necessary to show the actual financial
5 condition of the fund; and

6 (d) The total number of interments and entombments for the
7 preceding year.

8 (2) Each ~~such~~ report shall be verified by the owner or by the
9 president or the vice-president and one other officer of the cemetery
10 authority and shall be attested to by the accountant, auditor, or other
11 person preparing the same.

12 ~~(3) (Deleted by amendment, L. 92, p. 1606, § 149, effective May~~
13 ~~20, 1992.)~~

14 **6-23-108. [Formerly 12-12-113] Delivery of copy of contract -**
15 **required.** A duplicate original of any contract entered into between a
16 purchaser of any lot, grave space, interment right, niche, or crypt and any
17 cemetery authority shall be given to the buyer at the time both parties
18 become bound by the contract and any consideration whatsoever is given
19 by the buyer and retained pursuant to the contract by the cemetery
20 authority.

21 **6-23-109. [Formerly 12-12-113.5] Burial memorial - changes**
22 **- notice of ownership.** (1) No person other than the owner of a burial
23 memorial or a person authorized by the owner of the burial memorial
24 shall make a change to the inscription on ~~such~~ THE burial memorial.

25 (2) If a burial memorial is to be placed at a grave space, niche, or
26 crypt that is purchased on or after July 1, 2004, the cemetery authority
27 shall give written notice to the purchaser of the grave space, niche, or

1 crypt of who shall be the owner of ~~such~~ THE burial memorial and, as
2 owner, who shall be entitled to make or authorize a change to the
3 inscription on ~~such~~ THE burial memorial.

4 (3) Any person violating the provisions of subsection (1) of this
5 section commits the crime of defacing property as defined in section
6 18-4-509 (1)(b). ~~C.R.S.~~

7 **6-23-110. [Formerly 12-12-114] Discrimination.** There shall be
8 no limitation, restriction, or covenant based upon race, color, sex, sexual
9 orientation, marital status, disability, national origin, or ancestry on the
10 size, placement, location, sale, or transfer of any cemetery grave space,
11 niche, or crypt or in the interment of a deceased person.

12 **6-23-111. [Formerly 12-12-115] Violations - penalties.** (1) It is
13 unlawful for any person to sell or offer to sell a grave space, niche, or
14 crypt upon the promise, representation, or inducement of resale at a
15 financial profit.

16 ~~(2) (Deleted by amendment, L. 92, p. 1607, § 152, effective May~~
17 ~~20, 1992.)~~

18 ~~(3)~~ (2) Any person who violates any provision of this article is
19 guilty of a misdemeanor and, upon conviction thereof, shall be punished
20 by a fine of not more than one thousand dollars, or by imprisonment in
21 the county jail for not more than one year, or by both ~~such~~ A fine and
22 imprisonment. Whenever any person has reason to believe that any person
23 is liable to punishment under this article, ~~such~~ THE person may certify the
24 facts to the district attorney of the judicial district in which the alleged
25 violation occurred who shall cause appropriate proceedings to be brought.

26 ~~(4) (Deleted by amendment, L. 92, p. 1607, § 152, effective May~~
27 ~~20, 1992.)~~

1 **6-23-112. [Formerly 12-12-116] Abandoned graves - right to**
2 **reclaim.** (1) If there is a lot, grave space, niche, or crypt in a cemetery in
3 which no remains have been interred, no burial memorial has been placed,
4 and no other improvement has been made for a continuous period of no
5 less than seventy-five years, a cemetery authority may initiate the process
6 of reclaiming title to the lot, grave space, niche, or crypt in accordance
7 with this section.

8 (2) A cemetery authority seeking to reclaim a lot, grave space,
9 niche, or crypt shall:

10 (a) Send written notice of the cemetery authority's intent to
11 reclaim title to the lot, grave space, niche, or crypt to the owner's
12 last-known address by first-class mail; and

13 (b) Publish a notice of the cemetery authority's intent to reclaim
14 title to the lot, grave space, niche, or crypt in a newspaper of general
15 circulation in the area in which the cemetery is located once per week for
16 four weeks.

17 (3) The notice required by subsection (2) of this section shall
18 clearly indicate that the cemetery authority intends to terminate the
19 owner's rights and title to the lot, grave space, niche, or crypt and include
20 a recitation of the owner's right to notify the cemetery authority of the
21 owner's intent to retain ownership of the lot, grave space, niche, or crypt.

22 (4) If the cemetery authority does not receive from the owner of
23 the lot, grave space, niche, or crypt a letter of intent to retain ownership
24 of the lot, grave space, niche, or crypt within sixty days after the last
25 publication of the notice required by ~~paragraph (b) of subsection (2)~~
26 **SUBSECTION (2)(b)** of this section, all rights and title to the lot, grave
27 space, niche, or crypt shall transfer to the cemetery authority. The

1 cemetery authority may then sell, transfer, or otherwise dispose of the lot,
2 grave space, niche, or crypt without risk of liability to the prior owner of
3 the lot, grave space, niche, or crypt.

4 (5) A cemetery authority that reclaims title to a lot, grave space,
5 niche, or crypt in accordance with this section shall retain in its records
6 for no less than one year a copy of the notice sent pursuant to ~~paragraph~~
7 ~~(a) of subsection (2)~~ SUBSECTION (2)(a) of this section and a copy of the
8 notice published pursuant to ~~paragraph (b) of subsection (2)~~ SUBSECTION
9 (2)(b) of this section.

10 (6) If a person submits to a cemetery authority a legitimate claim
11 to a lot, grave space, niche, or crypt that the cemetery authority has
12 reclaimed pursuant to this section, the cemetery authority shall transfer to
13 the person at no charge a lot, grave space, niche, or crypt that, to the
14 extent possible, is equivalent to the reclaimed lot, grave space, niche, or
15 crypt.

16 (7) Notwithstanding any provision of law to the contrary, on and
17 after August 7, 2006, a cemetery authority shall not convey title to the real
18 property surveyed as a lot in a cemetery for use as a burial space. A
19 cemetery authority may grant interment rights to a lot, grave space, niche,
20 or crypt in a cemetery.

21 **SECTION 2.** In Colorado Revised Statutes, 7-47-101, **amend**
22 (1.5)(b) as follows:

23 **7-47-101. Who may organize - powers.** (1.5) (b) This
24 subsection (1.5) applies only to cemeteries as defined in ~~section~~
25 ~~12-12-101 (1.5), C.R.S.~~ SECTION 6-23-101 (2).

26 **SECTION 3.** In Colorado Revised Statutes, 38-1-202, **amend** (2)
27 introductory portion and (2)(d) as follows:

1 **38-1-202. Governmental entities, corporations, and persons**
2 **authorized to use eminent domain.** (2) The following types of
3 corporations and persons, in accordance with all procedural and other
4 requirements specified in this article and articles 2 to 7 of this ~~title~~ TITLE
5 38 and to the extent and within any time frame specified in the applicable
6 authorizing provision of the state constitution or statute may exercise the
7 power of eminent domain:

8 (d) A cemetery authority, as defined in ~~section 12-12-101 (2),~~
9 ~~C.R.S. SECTION 6-23-101 (3), as authorized in section 12-12-105, C.R.S.~~
10 SECTION 6-23-104;

11 **SECTION 4. Repeal of relocated provisions in this act.** In
12 Colorado Revised Statutes, repeal article 12 of title 12.

13 **SECTION 5. Act subject to petition - effective date.** This act
14 takes effect at 12:01 a.m. on the day following the expiration of the
15 ninety-day period after final adjournment of the general assembly (August
16 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a
17 referendum petition is filed pursuant to section 1 (3) of article V of the
18 state constitution against this act or an item, section, or part of this act
19 within such period, then the act, item, section, or part will not take effect
20 unless approved by the people at the general election to be held in
21 November 2018 and, in such case, will take effect on the date of the
22 official declaration of the vote thereon by the governor.