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HOUSE BILL 17-1244

BY REPRESENTATIVE(S) Herod, Foote, Lee, Willett, Wist, Gray, Hooton, Lontine, Valdez;
also SENATOR(S) Gardner, Cooke, Guzman, Holbert, Kagan, Coram.

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

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

SECTION 1. In Colorado Revised Statutes, **add with amended and relocated provisions** article 24 to title 6 as follows:

ARTICLE 24
Cemeteries

6-24-101. [Formerly 12-12-101] Definitions. As used in this ~~article~~ ARTICLE 24, unless the context otherwise requires:

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

Capital letters indicate new material added to existing statutes; dashes through words indicate deletions from existing statutes and such material not part of act.

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

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

~~(2.5)~~ Repealed.

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

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

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

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

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

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

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

6-24-102. [Formerly 12-12-103] Organization as endowment care cemetery - when. Any person who, after July 1, 1965, establishes or acquires a cemetery within twenty miles from the exterior boundary of any city with a population of five thousand or more, according to the latest federal decennial census, shall be organized as an endowment care cemetery.

6-24-103. [Formerly 12-12-104] Nonendowment section in endowment care cemetery. Any cemetery authority of an endowment care cemetery ~~which~~ THAT has a nonendowed section that is used only as single graves for indigents may continue to donate ~~said~~ THE graves for the burial of indigents. Nothing in this article shall be construed to prevent a cemetery authority of an endowed care cemetery from donating ~~such~~ a grave space for the burial of an indigent person without placing money in the endowment care fund for ~~such~~ THE space.

6-24-104. [Formerly 12-12-105] Acquisition of land. Any cemetery authority may acquire suitable and sufficient land for a cemetery in a manner provided by articles 1 to 7 of title 38. C.R.S.

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

6-24-106. [Formerly 12-12-109] Endowment care fund. (1) A cemetery authority of an endowment care cemetery shall establish an

irrevocable endowment care fund for each endowment care cemetery owned, maintained, or operated by it in a state bank or trust company authorized to act as fiduciary and under the supervision of the banking board or in a national banking association authorized to act as fiduciary or in a state or federally chartered savings and loan association authorized to act as a fiduciary. ~~Such~~ THE endowment care fund shall be invested in investments lawful for trustees, which shall not include investments in nor mortgages on property owned or contracted for by the cemetery authority or any owned or affiliated company.

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

(I) Plan A:

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

(II) Plan B:

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

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

mausoleum)

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

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

(3) (a) The cemetery authority of an endowment care cemetery, before commencing operation, on or after July 1, 1965, shall have on deposit in the endowment care fund a sum in accordance with the following scale:

For 10,000 or less population	\$10,000
For more than 10,000 but less than 20,000 population	\$15,000
For 20,000 but less than 25,000 population	\$20,000
For 25,000 or more population	\$25,000

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

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

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

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

(6) The cemetery authority of an endowment care cemetery shall keep in its principal office a copy of the report referred to in ~~section 12-12-110~~ SECTION 6-24-107, which shall be available to any grave space, niche, or crypt owner or his OR HER duly authorized representative for inspection and study.

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

6-24-107. [Formerly 12-12-110] Reports. (1) Each cemetery authority shall keep on file annually, within three months after the end of its fiscal year, a written report setting forth:

(a) The total amount deposited in the endowment care fund, listing separately the total amounts paid for endowment of grave spaces, for

niches, and for crypts, in accordance with the provisions of ~~section 12-12-109~~ SECTION 6-24-106;

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

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

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

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

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

6-24-108. [Formerly 12-12-113] Delivery of copy of contract - required. A duplicate original of any contract entered into between a purchaser of any lot, grave space, interment right, niche, or crypt and any cemetery authority shall be given to the buyer at the time both parties become bound by the contract and any consideration whatsoever is given by the buyer and retained pursuant to the contract by the cemetery authority.

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

(2) If a burial memorial is to be placed at a grave space, niche, or crypt that is purchased on or after July 1, 2004, the cemetery authority shall give written notice to the purchaser of the grave space, niche, or crypt of who shall be the owner of ~~such~~ THE burial memorial and, as owner, who shall be entitled to make or authorize a change to the inscription on ~~such~~ THE burial memorial.

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

6-24-110. [Formerly 12-12-114] Discrimination. There shall be no limitation, restriction, or covenant based upon race, color, sex, sexual orientation, marital status, disability, national origin, or ancestry on the size, placement, location, sale, or transfer of any cemetery grave space, niche, or crypt or in the interment of a deceased person.

6-24-111. [Formerly 12-12-115] Violations - penalties. (1) It is unlawful for any person to sell or offer to sell a grave space, niche, or crypt upon the promise, representation, or inducement of resale at a financial profit.

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

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

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

6-24-112. [Formerly 12-12-116] Abandoned graves - right to reclaim. (1) If there is a lot, grave space, niche, or crypt in a cemetery in which no remains have been interred, no burial memorial has been placed, and no other improvement has been made for a continuous period of no less than seventy-five years, a cemetery authority may initiate the process of reclaiming title to the lot, grave space, niche, or crypt in accordance with this section.

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

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

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

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

(4) If the cemetery authority does not receive from the owner of the lot, grave space, niche, or crypt a letter of intent to retain ownership of the lot, grave space, niche, or crypt within sixty days after the last publication of the notice required by ~~paragraph (b) of subsection (2)~~ SUBSECTION (2)(b) of this section, all rights and title to the lot, grave space, niche, or crypt shall transfer to the cemetery authority. The cemetery authority may then sell, transfer, or otherwise dispose of the lot, grave space, niche, or crypt without risk of liability to the prior owner of the lot, grave space, niche, or crypt.

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

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

(7) Notwithstanding any provision of law to the contrary, on and after August 7, 2006, a cemetery authority shall not convey title to the real property surveyed as a lot in a cemetery for use as a burial space. A

cemetery authority may grant interment rights to a lot, grave space, niche, or crypt in a cemetery.

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

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

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

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

(d) A cemetery authority, as defined in ~~section 12-12-101 (2);~~ ~~C.R.S. SECTION 6-24-101 (3),~~ as authorized in ~~section 12-12-105, C.R.S. SECTION 6-24-104;~~

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

SECTION 5. Act subject to petition - effective date. This act takes effect at 12:01 a.m. on the day following the expiration of the ninety-day period after final adjournment of the general assembly (August 9, 2017, if adjournment sine die is on May 10, 2017); except that, if a referendum petition is filed pursuant to section 1 (3) of article V of the state constitution against this act or an item, section, or part of this act within such period, then the act, item, section, or part will not take effect unless

approved by the people at the general election to be held in November 2018 and, in such case, will take effect on the date of the official declaration of the vote thereon by the governor.

Crisanta Duran
SPEAKER OF THE HOUSE
OF REPRESENTATIVES

Kevin J. Grantham
PRESIDENT OF
THE SENATE

Marilyn Eddins
CHIEF CLERK OF THE HOUSE
OF REPRESENTATIVES

Effie Ameen
SECRETARY OF
THE SENATE

APPROVED _____

John W. Hickenlooper
GOVERNOR OF THE STATE OF COLORADO