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HOUSE BILL 585

45TH LEGISLATURE - STATE OF NEW MEXICO - FIRST SESSION, 2001

INTRODUCED BY

Lorenzo A. Larranaga

AN ACT

RELATING TO CEMETERIES; REVISING THE ENDOWED CARE CEMETERY ACT TO UPDATE IT; AMENDING, REPEALING AND ENACTING SECTIONS OF THE NMSA 1978.

BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF NEW MEXICO:

Section 1. Section 58-17-1 NMSA 1978 (being Laws 1961, Chapter 156, Section 1) is amended to read:

"58-17-1. DECLARATION OF POLICY.--It is [~~hereby~~] declared to be necessary in the public interest that cemeteries [~~as hereinafter defined~~] advertising or selling "endowed care or perpetual care" in connection with the sale of cemetery lots or burial spaces be subject to sufficient regulation by the state to [~~insure~~] ensure the establishment of sound business practices necessary to furnish the [~~endowment~~] endowed care or perpetual care guaranteed. The

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1 provisions of the Endowed Care Cemetery Act [~~of 1961~~] shall be
2 liberally construed to carry out its purposes. "

3 Section 2. Section 58-17-2 NMSA 1978 (being Laws 1961,
4 Chapter 156, Section 2) is amended to read:

5 "58-17-2. SHORT TITLE. -- [~~This act~~] Chapter 58, Article
6 17 NMSA 1978 may be cited as the "Endowed Care Cemetery Act
7 [~~of 1961~~]" . "

8 Section 3. Section 58-17-3 NMSA 1978 (being Laws 1961,
9 Chapter 156, Section 3) is repealed and a new Section 58-17-3
10 NMSA 1978 is enacted to read:

11 "58-17-3. [NEW MATERIAL] DEFINITIONS. -- As used in the
12 Endowed Care Cemetery Act:

13 A. "affiliate" means a corporation that is related
14 to another corporation by shareholdings or other means of
15 control and includes a subsidiary, parent or sibling
16 corporation;

17 B. "burial park" means a tract of land that has
18 been dedicated to the purposes of and used, and intended to be
19 used, for the interment of remains in graves;

20 C. "care funds" means realty or personalty
21 impressed with a trust by the terms of a gift, grant,
22 contribution, payment, devise, bequest or contract, and income
23 accumulated therefrom where legally so directed by the terms
24 of the transaction by which the principal was established;

25 D. "cemetery" means a place dedicated to and used

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1 and intended to be used for the permanent interment of
2 remains;

3 E. "cemetery authority" means a person that owns,
4 operates, controls or manages a cemetery or holds lands for
5 burial purposes;

6 F. "columbarium" means a structure or space in a
7 structure used, or intended to be used, to contain cremated
8 remains;

9 G. "cremated remains" means remains after
10 incineration in a crematory;

11 H. "cremation" means the irreversible process of
12 reducing remains to bone fragments through intense heat and
13 evaporation in a specifically designed furnace or retort and
14 includes a mechanical or thermal process whereby the bone
15 fragments are pulverized, or otherwise further reduced in size
16 or quantity;

17 I. "crematory" means a structure of most durable
18 and lasting fireproof construction containing one or more
19 specifically designed furnaces or retorts, used, or intended
20 to be used, for cremation of remains;

21 J. "crypt" means the chamber in a mausoleum of
22 sufficient size to entomb the remains;

23 K. "depository institution" means an insured bank,
24 thrift institution or credit union;

25 L. "director" means the director of the financial

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1 institutions division of the regulation and licensing
2 department;

3 M "endowed care" means the general maintenance of
4 the cemetery area dedicated to endowed care, including the
5 cutting and trimming of lawns, shrubs and trees at reasonable
6 intervals, keeping all places where interments have been made
7 in proper order, keeping in repair the drains, waterlines,
8 roads, buildings, fences and other structures consistent with
9 a well-maintained cemetery; "endowed care" includes overhead
10 expenses necessary for the foregoing purposes, including
11 maintenance of machinery, tools and equipment, compensation of
12 employees for the performance of duties related to endowed
13 care, including reasonable payments for employees' pension and
14 other benefit plans, payment of reasonable and necessary
15 insurance premiums, the maintenance of necessary records of
16 lot ownership, transfers and burials and the administration of
17 care funds in those instances where those administering the
18 funds fail or refuse to act;

19 N. "endowed or perpetual care cemetery" means a
20 cemetery or that designated portion of a cemetery for the
21 benefit of which a care fund is established;

22 O. "entombment" means the permanent interment of
23 remains in a crypt or vault;

24 P. "fraternal cemetery" means a cemetery owned,
25 operated, controlled or managed by any fraternal organization

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1 or its auxiliary organizations, in which the sale of burial
2 space is restricted principally to its members;

3 Q. "grave" means a space of ground in a burial
4 park intended to be used for the permanent interment in the
5 ground of remains;

6 R. "interment" means the permanent disposition of
7 the remains by inurnment, entombment or burial;

8 S. "inurnment" means placing cremated remains in
9 an urn;

10 T. "lot", "plot" or "burial space" means space in
11 a cemetery owned by one or more individuals, an association or
12 fraternal or other organization and used, or intended to be
13 used, for the permanent interment of the remains of one or
14 more deceased persons and includes adjoining graves, adjoining
15 crypts or adjoining niches;

16 U. "mausoleum" means a structure or building of
17 most durable and lasting fireproof construction used or
18 intended to be used for the permanent interment in crypts of
19 remains;

20 V. "municipal cemetery" means a cemetery owned,
21 operated, controlled or managed by a incorporated or
22 unincorporated political subdivision;

23 W. "niche" means a recess in a columbarium used,
24 or intended to be used, for the permanent interment of
25 cremated remains;

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1 X. "no endowed care cemetery" means a cemetery for
2 the benefit of which no care fund has been established;

3 Y. "plot owner", "owner" or "lot proprietor" means
4 a person in whose name a burial plot is recorded in the office
5 of the cemetery authority as owner of the exclusive right of
6 burial, or who holds from the authority a conveyance of the
7 exclusive rights of burial or a certificate of ownership of
8 the exclusive right of burial;

9 Z. "religious cemetery" means a cemetery owned,
10 operated, controlled or managed by a recognized church,
11 religious society, association or denomination, or by a
12 cemetery authority or a corporation administering, or through
13 which is administered the secular matters of a recognized
14 church, religious society, association or denomination;

15 AA. "remains" means the body of a deceased person;
16 and

17 BB. "vault" means a container that is designed for
18 placement in a grave space around a casket or urn. "

19 Section 4. Section 58-17-4 NMSA 1978 (being Laws 1961,
20 Chapter 156, Section 4) is amended to read:

21 "58-17-4. GIFTS AND CONTRIBUTIONS--CARE FUNDS--TRUST
22 FUNDS. --

23 A. Any A cemetery authority is hereby
24 authorized and empowered to accept any gift, grant,
25 contribution, payment, devise or bequest, or pursuant to

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1 ~~contract, any sum of money, funds securities or to contract~~
2 ~~any sum of money, funds, securities or property of any kind or~~
3 ~~the income or avails thereof and to] care funds and hold [the~~
4 ~~same] them in trust in perpetuity for the care of its~~
5 ~~cemetery; [or] for the care of any lot, grave, crypt or niche~~
6 ~~in its cemetery; [or] for the special care of any lot, grave,~~
7 ~~crypt or niche in its cemetery; or for the special care of any~~
8 ~~lot, grave, crypt or niche or of any family mausoleum or~~
9 ~~memorial, marker or monument in its cemetery. [No gift,~~
10 ~~grant, devise, bequest, payment or other contribution]~~
11 Creation of care funds shall not be invalid by reason of any
12 indefiniteness or uncertainty as to the beneficiary designated
13 in the instrument creating the [~~gift, grant, devise, bequest,~~
14 ~~payment or other contribution]~~ funds. If [~~any gift, grant,~~
15 ~~devise, bequest, payment or other contribution consists of]~~
16 care funds accepted by a cemetery authority include nonincome
17 producing property, the [~~cemetery authority accepting it is~~
18 ~~authorized and empowered to]~~ authority may sell [such] that
19 property and [~~to]~~ invest the funds obtained in accordance with
20 the provisions of [~~the next succeeding paragraph. The care~~
21 ~~funds shall be held intact and, unless otherwise restricted by~~
22 ~~the terms of the gift, grant, devise, bequest, contribution,~~
23 ~~payment, contract or other payment, the cemetery authority or~~
24 ~~the trustee of the care funds of the cemetery authority]~~ this
25 section.

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1 B. In acquiring, investing, reinvesting,
2 exchanging, retaining, selling and managing ~~[property for any~~
3 ~~such trust]~~ care funds, the cemetery authority or trustee of
4 the funds shall exercise the judgment and care under the
5 circumstances then prevailing ~~[which]~~ that men of prudence,
6 discretion and intelligence exercise in the management of
7 their own affairs, not in regard to speculation but in regard
8 to the permanent disposition of their funds, considering the
9 probable income as well as the probable safety of their
10 capital. Within the limitations of ~~[the foregoing]~~ this
11 standard, the cemetery authority or the trustee of the care
12 funds ~~[of the cemetery authority]~~ is authorized to acquire and
13 retain every kind of property ~~[real, personal or mixed]~~ and
14 every kind of investment ~~[including specifically but without~~
15 ~~limiting the generality of the foregoing, bonds, debentures~~
16 ~~and other corporate obligations, stocks, preferred or common,~~
17 ~~and real estate mortgages, which]~~ that men of prudence,
18 discretion and intelligence acquire or retain for their own
19 account. Within the limitations of ~~[the foregoing]~~ this
20 standard, ~~[such]~~ the cemetery authority or trustee is
21 authorized to retain property properly acquired, without
22 limitation as to time and without regard as to the suitability
23 for original purpose.

24 C. ~~[The]~~ Care funds ~~[authorized by this section]~~
25 may be commingled with other trust funds received by ~~[such]~~

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1 the cemetery authority for the care of its cemetery or for the
2 care or special care of any lot, grave, crypt, niche, marker
3 or monument in its cemetery, whether received by gift, grant,
4 devise, bequest, contribution, payment, contract or other
5 conveyance [~~heretofore or hereafter~~] made to [~~such~~] the
6 cemetery authority. The net income only from the investment
7 of [~~such~~] the care funds shall be allocated and used for the
8 purposes specified in the transaction by which the principal
9 was established in the proportion that each contribution bears
10 to the entire sum invested.

11 D. With the prior written approval of the
12 director, care funds may be commingled with trust funds of
13 other cemetery authorities received by those authorities
14 pursuant to this section. Net income only from the investment
15 of those care funds shall be allocated to each cemetery
16 authority and used for the purposes specified in the
17 transaction by which the principal was established in the
18 proportion that each authority's contribution bears to the
19 entire sum invested."

20 Section 5. Section 58-17-5 NMSA 1978 (being Laws 1961,
21 Chapter 156, Section 5) is amended to read:

22 "58-17-5. LOANS BY CEMETERIES. -- Except upon written
23 approval of the [~~state bank examiner~~] director, no loan or
24 investment of [~~any~~] care funds accepted by [~~any~~] a cemetery
25 authority [~~owning, operating, controlling or managing a~~

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1 ~~cemetery or by any trustee~~ shall be made:

2 A. to any officer, director or trustee of [~~such~~]
3 the cemetery authority or to any [~~firm, corporation,~~
4 ~~association or partnership~~] person in which any officer,
5 director or trustee of [~~such~~] the cemetery authority has a
6 controlling interest;

7 B. on [~~and~~] or in [~~any~~] real estate or in [~~any~~] a
8 note, bond, mortgage or deed of trust in which any officer,
9 director or trustee of [~~such~~] the cemetery authority has any
10 financial interest; or

11 C. on or in any unproductive real estate or real
12 estate outside [~~of~~] this state or [~~in~~] permanent improvements
13 of the cemetery or any of its facilities unless specifically
14 authorized by the instrument [~~whereby~~] by which the principal
15 fund was created [~~and~~]. No commission or brokerage fee for
16 the purchase or sale of [~~any~~] property shall be paid in excess
17 of that usual and customary at the time and in the locality
18 where [~~such~~] the purchase or sale is made, and all [~~such~~]
19 commissions and brokerage fees shall be fully reported in the
20 next annual statement of [~~such~~] the cemetery authority or
21 trustee. "

22 Section 6. Section 58-17-6 NMSA 1978 (being Laws 1961,
23 Chapter 156, Section 6, as amended) is amended to read:

24 "58-17-6. INSTRUMENT REGARDING CARE TO BE FURNISHED BY
25 CEMETERY AUTHORITY. -- [~~Whenever~~] If a cemetery authority

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1 ~~[owning, operating, controlling or managing a cemetery]~~
2 accepts care funds, either in connection with the sale of a
3 lot, grave, crypt or niche or in pursuance of a contract, or
4 ~~[whenever]~~ if, as a condition precedent to the purchase of a
5 lot, grave, crypt or niche, ~~[such]~~ the cemetery authority
6 requires the establishment of a care fund or a deposit in an
7 already existing care fund, ~~[then such]~~ the cemetery authority
8 shall execute and deliver to the person from whom ~~[received]~~
9 it receives care funds an instrument in writing ~~[which]~~ that
10 shall specifically state:

11 A. the nature and extent of the care to be
12 furnished;

13 B. that ~~[such]~~ the care shall be furnished only
14 insofar as the net income derived from the amount deposited in
15 trust will permit, and that the income from the amount so
16 deposited less necessary expenditures of administering the
17 trust ~~[shall be deemed the]~~ constitutes net income;

18 C. that the cemetery is operated as an endowed
19 care cemetery, which means that ~~[an endowed]~~ a care fund for
20 its maintenance has been established in conformity with the
21 ~~[laws of the state of New Mexico]~~ Endowed Care Cemetery Act
22 and the definition of endowed care ~~[as appears in Section 58-~~
23 ~~17-3 NMSA 1978]~~ in that act; and

24 D. that not less than the following amounts will
25 be set aside and deposited in trust:

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1 (1) for graves, twenty-five percent of the
2 lot or land sales price unless a lesser amount is approved by
3 the director [~~of the financial institutions division~~];

4 (2) for a crypt [~~vault~~] or niche, ten percent
5 of the sales price; and

6 (3) for the special care of any lot, grave,
7 crypt or niche or the family mausoleum, memorial, marker or
8 monument, the full amount received.

9 [~~Such~~] E. The setting aside and deposit pursuant
10 to Subsection D of this section shall be made by [~~such~~] the
11 cemetery authority not later than thirty days after the close
12 of the month in which [~~was received any~~] a payment was
13 received from any source on the purchase price of each lot,
14 grave, crypt or niche [~~or vault~~] or [~~any~~] a payment was
15 received from any source for the general or special care of a
16 lot, grave, crypt or niche or of a family mausoleum, memorial,
17 marker or monument. If payments [~~for the above~~] are made in
18 installments, only the applicable pro rata share of [~~such~~] the
19 payments shall be [~~so~~] deposited. [~~Such~~] Amounts deposited
20 shall be held by the trustee of the care funds of [~~such~~] the
21 cemetery authority in trust in perpetuity for the specific
22 purpose stated in the written instrument. "

23 Section 7. Section 58-17-7 NMSA 1978 (being Laws 1961,
24 Chapter 156, Section 7) is amended to read:

25 "58-17-7. REPRESENTATIONS REGARDING CARE AND MAINTENANCE

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1 TO BE FURNISHED. -- ~~[No]~~ A cemetery authority, ~~[nor any]~~ agent,
2 servant or employee of it ~~[nor any other]~~ or another person
3 shall not advertise, represent, guarantee, promise or contract
4 that perpetual care, permanent care, perpetual or permanent
5 maintenance, care forever, continuous care, eternal care,
6 everlasting care, endowed care or any similar or equivalent
7 care or care for any number of years of any cemetery or of any
8 lot, grave, crypt or niche or of any family mausoleum,
9 memorial, marker or monument will be furnished until ~~[they~~
10 ~~have]~~ he has complied with the provisions of the Endowed Care
11 Cemetery Act ~~[of 1961]~~. "

12 Section 8. Section 58-17-8 NMSA 1978 (being Laws 1961,
13 Chapter 156, Section 8) is amended to read:

14 "58-17-8. CARE FUNDS NOT SUBJECT TO TAX. -- The ~~[endowed]~~
15 care funds authorized ~~[herein]~~ in the Endowed Care Cemetery
16 Act and all sums paid ~~[therein]~~ into those funds or
17 contributed ~~[thereto]~~ to those funds are ~~[and each thereof~~
18 ~~are, hereby]~~ expressly permitted and ~~[shall be deemed to be]~~
19 are for charitable and eleemosynary purposes. ~~[Such endowed]~~
20 Care ~~[shall be deemed to be provisioned]~~ funds are provided
21 for the discharge of the duty due from the person ~~[or persons]~~
22 contributing ~~[thereto]~~ to those funds to the persons interred
23 and to be interred in the cemetery and likewise are a
24 provision for the benefit and protection of the public by
25 preserving and keeping cemeteries from becoming places of

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1 disorder, reproach and desolation in the communities in which
2 they are situated. The ~~[trust]~~ care funds authorized ~~[herein]~~
3 in the Endowed Care Cemetery Act and the income ~~[therefrom]~~
4 from those funds and ~~[any]~~ funds received under a contract to
5 furnish care of burial space shall be exempt from taxation.
6 No payment, gift, grant, bequest or other contribution for
7 ~~[such]~~ general endowed care ~~[shall be deemed to be]~~ is invalid
8 by reason of any indefiniteness or uncertainty of the persons
9 designated as beneficiaries in the instruments creating ~~[such]~~
10 the trust nor shall ~~[said fund]~~ care funds or ~~[any]~~ a
11 contribution ~~[thereto]~~ to them be deemed to be invalid as
12 violating any law against perpetuities or the suspension of
13 the power of alienation of title to property."

14 Section 9. Section 58-17-9 NMSA 1978 (being Laws 1961,
15 Chapter 156, Section 9) is amended to read:

16 "58-17-9. COMPLIANCE WITH LAW REQUIRED. --

17 A. It is unlawful for ~~[any]~~ a cemetery to hold out
18 to the public or sell endowed care in connection with the sale
19 of burial space until it has complied with the requirements of
20 the Endowed Care Cemetery Act ~~[of 1961]~~. Endowed care
21 cemeteries ~~[are hereby required to]~~ shall establish and
22 maintain with a state or ~~[national bank]~~ federally chartered
23 depository institution or trust company doing business in the
24 state an irrevocable trust fund, the income only of ~~[such]~~
25 that fund to be available to the cemetery in the furnishing of

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1 endowed care. Provided, however, that when the cemetery
2 authority [~~shall certify~~] certifies to the [~~state bank~~
3 ~~examiner~~] director that the services of a state or [~~national~~
4 ~~bank~~] federally chartered depository institution or trust
5 company are not available, the cemetery may appoint as trustee
6 one or more individuals, none of whom shall be an officer,
7 director, representative, employee or relative of an officer,
8 director or employee of the cemetery authority, which [~~said~~]
9 trustee [~~or trustees~~] shall have all powers of investment as
10 provided [~~herein~~] in this section. Endowed care cemeteries
11 may pool their care funds pursuant to Subsection D of Section
12 58-17-4 NMSA 1978 as approved by the director upon request by
13 the cemeteries. The net income from the investment of care
14 funds shall never be used for the improvement or embellishment
15 of unsold property to be offered for sale.

16 B. In establishing its care funds, the cemetery
17 authority may from time to time adopt plans for the general
18 care, maintenance and embellishment of its cemetery, and if
19 the cemetery originally sold cemetery lots without provision
20 for endowed care, it shall have the right to accept deposits
21 from [~~such~~] those lot owners for the purpose of establishing
22 endowed care on those lots, provided that the deposits are
23 disposed of in the same manner as regular care funds. "

24 Section 10. Section 58-17-10 NMSA 1978 (being Laws 1961,
25 Chapter 156, Section 10, as amended) is amended to read:

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1 "58-17-10. REGISTRATION WITH DIRECTOR [~~OF THE FINANCIAL~~
2 ~~INSTITUTIONS DIVISION~~]. --

3 A. [~~Every~~] After the initial registration a
4 cemetery authority [~~owning, operating, controlling or managing~~
5 ~~an endowed care cemetery~~] shall register with the director [~~of~~
6 ~~the financial institutions division~~] by filing an annual
7 registration statement, upon forms furnished by the director,
8 which shall show as of the end of the preceding calendar year:

9 (1) the amount of the principal of the care
10 funds held by the trustee of the care funds of the cemetery
11 authority at the beginning of the year and in addition thereto
12 all money or property received during the year:

13 (a) under and by virtue of the sale of
14 a lot, grave, crypt or niche;

15 (b) under and by virtue of the terms of
16 any contract authorized by law; or

17 (c) under and by virtue of any gift,
18 grant, devise, bequest, payment or other contribution made
19 either prior to or subsequent to the effective date of the
20 Endowed Care Cemetery Act [~~of 1961~~];

21 (2) the securities in which the care funds
22 are invested and the cash on hand as of the date of the
23 report;

24 (3) the income received from the care funds
25 during the preceding calendar year; and

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1 (4) the amount expended in furnishing endowed
2 care during the preceding calendar year.

3 B. ~~Where~~ If any of the care funds of a cemetery
4 authority are held by a trustee, the annual registration
5 statement filed by ~~any~~ a cemetery authority shall contain a
6 certificate signed by the trustee of the care funds of the
7 cemetery authority certifying to the truthfulness of the
8 statements in the report as to:

9 (1) the total amount of principal of the care
10 funds held by the trustee;

11 (2) the securities in which the care funds
12 are invested and the cash on hand as of the date of the
13 report; and

14 (3) the income received from the care funds
15 during the preceding calendar year.

16 ~~Such~~ C. Annual registration statements shall be
17 filed by the cemetery authority on or before ~~March 15~~ June
18 30 of each calendar year in the office of the director. The
19 registration statement shall be made under oath. Each
20 registration statement shall be accompanied by a fee of fifty
21 dollars (\$50.00), and ~~no~~ the director shall not accept a
22 registration statement ~~[shall be accepted by the director~~
23 ~~without]~~ unless it is accompanied by the payment of the fee.

24 D. The director shall charge and collect a fee of
25 ten dollars (\$10.00) per day for late filings of registration

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1 statements up to a maximum of three hundred dollars (\$300).
2 This late charge shall also apply when the cemetery authority
3 is required by the director to revise a registration by a
4 specified date and fails to file the revised registration on
5 or before that date."

6 Section 11. Section 58-17-11 NMSA 1978 (being Laws 1961,
7 Chapter 156, Section 11, as amended) is amended to read:

8 "58-17-11. DEPOSIT OR BOND OF ENDOWED CARE CEMETERIES. --
9 [~~Whenever~~] If a cemetery authority [~~owning, operating,~~
10 ~~controlling or managing a cemetery~~] is duly organized and
11 desires to accept care funds authorized by the Endowed Care
12 Cemetery Act [~~of 1961~~], it shall make an initial deposit to
13 the care fund of [~~twenty thousand dollars (\$20,000) or~~]
14 twenty-five thousand dollars (\$25,000). In lieu [~~thereof~~
15 ~~such~~] of the initial deposit, the cemetery authority may
16 furnish a surety bond issued by a bonding company or insurance
17 company authorized to do business in this state in the face
18 amount of [~~thirty thousand dollars (\$30,000)~~] thirty-five
19 thousand dollars (\$35,000), and [~~such~~] the bond shall run to
20 the trustee for the benefit of the care funds held by [~~such~~]
21 the trustee. This bond shall be for the purpose of
22 guaranteeing an accumulation of [~~twenty thousand dollars~~
23 ~~(\$20,000)~~] twenty-five thousand dollars (\$25,000) in [~~such~~]
24 the care fund and also for the [~~further~~] purpose of assuring
25 that the cemetery authority shall provide annual [~~perpetual or~~

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1 ~~endowment~~] endowed care in an amount equal to the annual
2 reasonable return on a secured cash investment of [~~twenty~~
3 ~~thousand dollars (\$20,000)~~] twenty-five thousand dollars
4 (\$25,000) until [~~twenty thousand dollars (\$20,000)~~] that
5 amount is accumulated in [~~said~~] the care funds, and these
6 shall be the conditions of [~~such~~] the surety bond; provided,
7 however, the liability of the principal and surety on the bond
8 shall in no event exceed [~~thirty thousand dollars (\$30,000)~~]
9 thirty-five thousand dollars (\$35,000). Provided further that
10 whenever a cemetery authority which has made an initial
11 deposit to the care fund demonstrates to the satisfaction of
12 the director [~~of the financial institutions division~~] that
13 more than [~~twenty thousand dollars (\$20,000)~~] twenty-five
14 thousand dollars (\$25,000) has been accumulated in the care
15 fund, the cemetery authority may petition the director for an
16 order allowing the cemetery authority to begin to withdraw its
17 deposit from the care fund, so long as at least [~~twenty~~
18 ~~thousand dollars (\$20,000)~~] twenty-five thousand dollars
19 (\$25,000) always remains in the care fund. "

20 Section 12. Section 58-17-12 NMSA 1978 (being Laws 1961,
21 Chapter 156, Section 12) is amended to read:

22 "58-17-12. DISPLAY OF SIGNS. -- [~~Each~~] A cemetery
23 authority authorized to accept care funds shall post in a
24 conspicuous place at or near each entrance of the cemetery a
25 clearly legible sign containing letters not less than six

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1 inches in height stating "Endowed Care Cemetery". Those
2 cemeteries [~~which~~] that furnish endowed care to some portions
3 and no endowed care to other portions shall display
4 appropriate signs of the same size letters designating which
5 part is subject to endowed care and which part is not.

6 Cemeteries [~~which~~] that do not furnish endowed care shall
7 display a sign containing letters not less than six inches in
8 height stating "No Endowed Care". "

9 Section 13. Section 58-17-13 NMSA 1978 (being Laws 1961,
10 Chapter 156, Section 13, as amended) is amended to read:

11 "58-17-13. ENFORCEMENT OF PROVISIONS OF ACT BY DIRECTOR
12 [~~OF FINANCIAL INSTITUTIONS DIVISION~~]. --

13 A. The duty of administering and enforcing the
14 provisions of the Endowed Care Cemetery Act [~~of 1961~~] is
15 [~~hereby~~] imposed on the director, [~~of the financial~~
16 ~~institutions division~~] who shall approve all forms of contract
17 for endowed care and shall have authority to subpoena
18 witnesses, conduct hearings and investigations and issue
19 [~~such~~] orders [~~as are~~] reasonably necessary to regulate
20 endowed care cemeteries in the public interest.

21 [~~A. The director shall examine the books of each~~
22 ~~endowed care cemetery at least once every year and shall also~~
23 ~~cause an examination to be made of each endowed care cemetery~~
24 ~~at least once every year to ensure that endowed care is~~
25 ~~actually being furnished in the manner required by law and by~~

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1 ~~its contracts and to ensure that the provisions of Section~~
2 ~~58-17-6 NMSA 1978 are followed. In lieu of the examination of~~
3 ~~the books, however, the director may require the cemetery~~
4 ~~authority to submit a certified audit prepared by a certified~~
5 ~~or registered public accountant, which audit shall cover in~~
6 ~~detail the information required in the annual registration~~
7 ~~statement required by law.]~~

8 B. At the same time the registration statement is
9 due, the director shall require the cemetery authority to
10 submit an audit prepared by a certified public accountant.
11 The audit shall cover in detail the information required in
12 the annual registration statement required by law. In
13 addition, the director may examine each endowed care cemetery
14 to ensure that endowed care is being furnished in the manner
15 required by law.

16 [~~B.-~~] C. The cost of examining any cemetery
17 authority and any endowed care cemetery shall be paid by the
18 responsible authority, and it shall not exceed the actual cost
19 of conducting such an examination.

20 [~~C.-~~] D. If the director deems it necessary to hold
21 a hearing pursuant to the power [~~invested~~] vested in him by
22 the Endowed Care Cemetery Act [~~of 1961~~], the hearing may be
23 held in Santa Fe, New Mexico or at any other location within
24 New Mexico designated by the director.

25 E. In the conduct of any examination,

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1 investigation or hearing, the director may:

2 (1) compel the attendance of any person or
3 obtain any documents by subpoena;

4 (2) administer oaths; and

5 (3) examine any person under oath concerning
6 the business of any person subject to the provisions of the
7 Endowed Care Cemetery Act and in connection therewith require
8 the production of any books, records or papers relevant to the
9 inquiry.

10 F. In case of refusal to obey a subpoena issued to
11 any person, the district court of the first judicial district
12 for Santa Fe county, upon application by the director, may
13 issue to the person an order requiring him to appear before
14 the director or the staff member designated by the director,
15 there to produce documentary evidence if so ordered or to give
16 evidence relating to the matter under investigation or in
17 question. Failure to obey the order of the court may be
18 punished by the court as a contempt of court."

19 Section 14. Section 58-17-14 NMSA 1978 (being Laws 1961,
20 Chapter 156, Section 14, as amended) is amended to read:

21 "58-17-14. PROCEEDINGS IN CASE OF LAW VIOLATIONS. --

22 [~~Whenever~~] If a cemetery authority refuses or neglects to make
23 a required report or to file an annual registration statement
24 or willfully disobeys a valid order of the director [~~of the~~
25 ~~financial institutions division~~] or violates any provisions of

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1 the Endowed Care Cemetery Act [~~of 1961~~] or [~~regulation~~] rule
2 of the director, or [~~whenever~~] if it appears to the director
3 from any report or examination that [~~such~~] a cemetery
4 authority has committed a violation of law [~~or~~], that the care
5 funds have not been administered properly or that it is unsafe
6 or inexpedient for [~~such~~] the cemetery authority or the
7 trustee of the care funds of [~~such~~] the cemetery authority to
8 continue to administer [~~such~~] those funds or that any officer
9 of [~~such~~] the cemetery authority or of the trustee of the care
10 fund of [~~such~~] the cemetery authority has abused his trust or
11 has been guilty of misconduct in his official position
12 injurious to [~~such~~] the cemetery authority or that [~~such~~] the
13 cemetery authority has suffered as to its care funds a serious
14 loss by larceny, embezzlement, burglary, repudiation or
15 otherwise, the director may:

16 A. conduct an investigation or hold a hearing to
17 investigate any allegations pertaining to violations of the
18 provisions of the Endowed Care Cemetery Act [~~of 1961~~];

19 B. issue any order in furtherance of the duty
20 imposed on him by the Endowed Care Cemetery Act [~~of 1961~~];

21 C. institute a lawsuit in the district court of
22 the first judicial district for Santa Fe county [~~where the~~
23 ~~responsible cemetery authority or cemetery is located~~] to
24 recover any amounts due to the [~~endowed~~] care funds; or

25 D. apply to the district court of the first

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1 judicial district for Santa Fe county [~~where the responsible~~
2 ~~cemetery authority or cemetery is located~~] for [such] other
3 relief [~~as may be~~] consistent with the duty imposed on him by
4 the Endowed Care Cemetery Act [~~of 1961~~]. "

5 Section 15. Section 58-17-15 NMSA 1978 (being Laws 1961,
6 Chapter 156, Section 15) is amended to read:

7 "58-17-15. DISPOSITION OF CARE FUNDS UPON DISSOLUTION. --
8 Where any cemetery authority owning, operating, controlling or
9 managing a cemetery or any trustee for the [~~same~~] cemetery
10 authority has accepted care funds [~~within the meaning of~~]
11 pursuant to the Endowed Care Cemetery Act [~~of 1961~~] and
12 dissolution is sought by [such] the cemetery authority in any
13 manner, by resolution of [such] the cemetery authority or the
14 trustees [~~thereof~~] of the cemetery authority, notice shall be
15 given to the [~~state bank examiner~~] director of [such] the
16 intentions to dissolve [~~and~~]. It is [~~his~~] the director's duty
17 to see that proper disposition [~~shall be~~] is made of the care
18 funds [~~so~~] held by or for the benefit of [such] the cemetery
19 authority, as provided by law or in accordance with the trust
20 provisions of any gift, grant, contribution, payment, devise
21 or bequest or pursuant to any contracts whereby [such] the
22 funds were created. The [~~state bank examiner~~] director may
23 apply to the district court [~~of competent jurisdiction~~] for
24 the appointment of any receiver, trustee or successor in trust
25 or for direction of [such] the court as to the proper

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1 disposition to be made of [~~such~~] the care funds, to the end
2 that the uses and purposes for which [~~such~~] the trust or care
3 funds were created may be accomplished. "

4 Section 16. Section 58-17-16 NMSA 1978 (being Laws 1961,
5 Chapter 156, Section 16, as amended) is amended to read:

6 "58-17-16. VIOLATIONS--PUNISHMENT.-- [~~A.~~] Whoever
7 violates any provision of the Endowed Care Cemetery Act [~~of~~
8 ~~1961, except as provided in Subsection B of this section, is~~
9 ~~guilty of a petty misdemeanor.~~

10 ~~B. Whoever~~], fails to establish an irrevocable
11 trust fund, encroaches upon the principal of an irrevocable
12 trust, refuses to cooperate in an examination or investigation
13 or violates the provisions of a trust instrument by willfully
14 failing to deposit to a cemetery's trust fund the amounts
15 provided within the time provided by Section 58-17-6 NMSA
16 1978, or any greater amounts if the trust instrument provides
17 for greater amounts to be deposited, is guilty of a fourth
18 degree felony and shall be sentenced in accordance with the
19 [~~Criminal Sentencing Act~~] provisions of Section 31-18-15 NMSA
20 1978. "

21 Section 17. Section 58-17-17 NMSA 1978 (being Laws 1961,
22 Chapter 156, Section 17) is amended to read:

23 "58-17-17. EXEMPTION.--The provisions of the Endowed
24 Care Cemetery Act [~~of 1961 shall~~] do not apply to municipal
25 cemeteries, fraternal cemeteries, religious cemeteries or

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1 family [~~burying~~] burial grounds that provide burial only for
2 members. "

3 Section 18. A new section of the Endowed Care Cemetery
4 Act is enacted to read:

5 "[NEW MATERIAL] ESTABLISHING A CEMETERY AUTHORITY. --

6 A. A person establishing or acquiring a cemetery
7 subject to the Endowed Care Cemetery Act shall file an initial
8 registration with the director that contains the following
9 information:

10 (1) a detailed financial statement of the
11 proposed owners;

12 (2) a current credit report of the person
13 establishing or acquiring the cemetery and a resume for each
14 principal;

15 (3) the full name and address of the
16 registrant, if an individual; of every member, if the
17 registrant is a partnership or an association; of every
18 officer, if the registrant is a corporation; and of any person
19 owning ten percent or more of the cemetery;

20 (4) a plot plan that identifies the endowed
21 care sections of the cemetery and all plans for future
22 expansion of the cemetery;

23 (5) a copy of the form of contracts or
24 instruments to be used in the sales of endowed care lots,
25 graves, crypts or niches;

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1 (6) proof of ability to make the initial
2 deposit or secure a surety bond as required by Section
3 58-17-11 NMSA 1978;

4 (7) a registration fee in the amount of fifty
5 dollars (\$50.00); and

6 (8) any other information requested by the
7 director.

8 B. Failure to submit the information specified in
9 Subsection A of this section shall result in the denial of the
10 registration to sell endowed care. Until a registration to
11 operate a cemetery is approved by the director, a person
12 establishing or acquiring a cemetery authority shall not
13 advertise, represent, guarantee, promise or contract that
14 perpetual care, endowed care or any similar care will be
15 furnished. "

16 Section 19. A new section of the Endowed Care Cemetery
17 Act is enacted to read:

18 "[NEW MATERIAL] TRANSFER OF OWNERSHIP. --

19 A. An endowed care cemetery's registration is not
20 transferable. When any cemetery authority subject to the
21 provisions of the Endowed Care Cemetery Act is transferred,
22 the person acquiring the cemetery shall register with the
23 director as required by Section 58-17-18 NMSA 1978.

24 B. A transfer of ownership cannot take place and
25 no endowed care can be sold until the director has approved

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1 the registration required by Subsection A of this section. "

2 Section 20. A new section of the Endowed Care Cemetery
3 Act is enacted to read:

4 "[NEW MATERIAL] DENIAL, SUSPENSION OR REVOCATION OF
5 REGISTRATION. --

6 A. The director may deny, suspend or revoke any
7 registration if the registrant, or any director, officer,
8 employee or affiliate of the registrant:

9 (1) lacks a good business reputation;

10 (2) has violated any provision of the Endowed
11 Care Cemetery Act;

12 (3) has committed fraud in connection with
13 any transaction subject to the Endowed Care Cemetery Act;

14 (4) has made any misrepresentations or false
15 statements to or concealed any essential or material fact from
16 any person in the course of the cemetery business;

17 (5) has knowingly made or caused to be made
18 any false representation of material fact or has suppressed or
19 withheld from the director any information that the applicant
20 or registrant possesses and that if submitted by him would
21 have rendered the applicant or registrant ineligible to be
22 registered under the Endowed Care Cemetery Act;

23 (6) has refused to permit an examination by
24 the director of his books and records or has refused or
25 failed, within a reasonable time, to furnish any information,

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1 make any report or attend a hearing that may be required by
2 the director under the provisions of the Endowed Care Cemetery
3 Act;

4 (7) has not completed the annual registration
5 requirements or paid the registration fee; or

6 (8) has been convicted of a felony or any
7 misdemeanor involving moral turpitude, subject, however, to
8 the provisions of the Criminal Offender Employment Act.

9 B. If the director decides that action resulting
10 in the denial, suspension or revocation of a registration is
11 warranted, the director shall notify the registrant or
12 cemetery authority in writing of the reasons for the refusal
13 and shall advise the registrant or cemetery authority of the
14 right to a hearing before a final decision on the registration
15 is made. "

16 Section 21. A new section of the Endowed Care Cemetery
17 Act is enacted to read:

18 "[NEW MATERIAL] JUDICIAL REVIEW. --A person aggrieved by
19 the decision of the director in the enforcement of the Endowed
20 Care Cemetery Act may obtain judicial review pursuant to
21 Section 39-3-1.1 NMSA 1978. "

22 Section 22. EFFECTIVE DATE. --The effective date of the
23 provisions of this act is July 1, 2001.