

LEGISLATURE OF NEBRASKA
ONE HUNDRED EIGHTH LEGISLATURE
SECOND SESSION

LEGISLATIVE BILL 257

FINAL READING

Introduced by Lowe, 37.

Read first time January 10, 2023

Committee: General Affairs

1 A BILL FOR AN ACT relating to cemeteries; to amend sections 12-701,
2 12-702, and 17-938, Reissue Revised Statutes of Nebraska; to define
3 a term; to change provisions relating to abandonment and reversion
4 of cemetery lots; to authorize investment of funds from the sale of
5 cemetery lots as prescribed; to harmonize provisions; and to repeal
6 the original sections.

7 Be it enacted by the people of the State of Nebraska,

1 Section 1. Section 12-701, Reissue Revised Statutes of Nebraska, is
2 amended to read:

3 12-701 (1) For purposes of this section, lot owner means the
4 purchaser of a cemetery lot or such purchaser's heirs, administrators,
5 trustees, legatees, devisees, or assigns.

6 (2) Whenever a county, city, or village has acquired real estate for
7 the purpose of maintaining a cemetery or has acquired a cemetery from a
8 cemetery association pursuant to section 12-530, or a city or village is
9 the owner of a cemetery pursuant to section 15-239, 16-241, or 17-926,
10 and such county, city, or village or its predecessor in title has
11 conveyed any platted lot or other designated piece of ground within the
12 area of such cemetery, all rights to such conveyed platted lot or other
13 designated piece of ground, other than ground in which dead human remains
14 are actually buried and all ground within two feet of such human remains,
15 may be revested in the county, city, or village in the following manner
16 and subject to the following conditions:

17 (a) No interment shall have been made in the lot or other designated
18 piece of ground for a period of at least thirty years prior to the
19 commencement of any proceedings to revest such lot or other designated
20 piece of ground pursuant to this section;

21 (b) If a lot owner is a resident of the county where the cemetery is
22 located, the governing body of the county, city, or village shall cause
23 to be served upon such lot owner a notice that proceedings have been
24 initiated to revest all rights in such lot in the county, city, or
25 village and that such lot owner may, within the time provided by the
26 notice, file with the county clerk, city clerk, or village clerk a
27 statement in writing explaining how rights in the lot were acquired and
28 that such person desires to assert interment rights in the lot. The
29 notice shall be served in the manner provided for service of summons in a
30 civil case and shall provide a period of not less than thirty days in
31 which such statement can be filed. If the governing body ascertains that

1 the statement filed by the lot owner is a valid claim asserting the
2 rights of the lot owner in the lot, all further proceedings by the
3 governing body to revest title of the lot in the county, city, or village
4 shall be terminated by the governing body as to the lot identified in the
5 statement;

6 (c) If it is determined that the lot owner is not a resident of the
7 county and cannot be found in the county, the governing body may cause
8 the notice required by subdivision (b) of this subsection to be published
9 once each week for two consecutive weeks in a newspaper of general
10 circulation within the county, city, or village where such lot is
11 located. Such notice shall contain a general description of the title
12 reversion proceedings to be undertaken by the governing body pursuant to
13 this section, the relevant lot number and description, and name of the
14 lot owner. In addition, the notice shall notify the lot owner that such
15 lot owner may, within the time provided by the notice, file with the
16 county clerk, city clerk, or village clerk a statement setting forth how
17 such lot owner acquired rights in the lot and that such lot owner desires
18 to assert such rights. If the governing body ascertains that the
19 statement filed by the lot owner is a valid claim asserting the rights of
20 the lot owner in the lot, all further proceedings by the governing body
21 to revest all interests in the lot in the county, city, or village shall
22 be terminated by the governing body as to the lot identified in the
23 statement;

24 (d) All notices, including proof of service, and all rules and
25 regulations, ordinances, or resolutions adopted by the governing body
26 relative to reversion proceedings under this section shall be made a part
27 of the public records of such governing body;

28 (e) Any lot owner who fails to timely file a statement asserting a
29 right in a lot in accordance with subdivisions (b) and (c) of this
30 subsection shall be deemed to have abandoned such right in such lot. The
31 appropriate governing body may then bring an action in the district court

1 of the county in which the cemetery is located against all lot owners in
2 default, joining as many parties so in default as it may desire in one
3 action, to have the rights of the parties in such lots or parcels
4 terminated and the property restored to the governing body of such
5 cemetery free of any right, title, or interest of all such defaulting
6 parties or their heirs, administrators, trustees, legatees, devisees, or
7 assigns. Such action in all other respects shall be brought and
8 determined in the same manner as other actions to determine title to real
9 estate;

10 (f) In all cases brought under this section, the fact that the lot
11 owner has not, for a term of more than thirty successive years, had
12 occasion to make an interment in the lot and did not, upon notification
13 provided pursuant to this section, assert a claim in such lot, shall be
14 considered prima facie evidence that the lot owner has abandoned any
15 rights such lot owner may have had in such lot;

16 (g) A certified copy of the judgments in such actions quieting title
17 may be filed in the office of the register of deeds in and for the county
18 in which the cemetery is situated; and

19 (h) All notices and all proceedings pursuant to this section shall
20 distinctly describe the portion of such lot unused for burial purposes
21 and the county, city, or village shall leave sufficient ingress to, and
22 egress from, any grave upon the lot, either by duly dedicated streets or
23 alleys in the cemetery, or by leaving sufficient amounts of the unused
24 portions of the cemetery for such purposes.

25 (3) This section shall not apply to any lot in any cemetery
26 association where a perpetual care contract has been entered into between
27 such cemetery or the county, city, or village and the owner of such lot.

28 (4) Compliance with the terms of this section shall fully revest the
29 county, city, or village with, and divest the lot owner of record of,
30 title to such lot or portions of such lot unused for burial purposes as
31 though the lot had never been conveyed to any person, and such county,

1 city, or village shall have, hold, and enjoy such unclaimed portions of
2 such lot for its own uses and purposes, subject to the laws of this
3 state, to the charter of such cemetery, and to the rules and regulations,
4 ordinances, or resolutions of such governing county, city, or village.

5 (5) Any transfer by a lot owner of the interment right to a lot
6 shall be subject to any rules and regulations, ordinances, or resolutions
7 adopted and promulgated by the county, city, or village.

8 ~~(1) The ownership of or right in or to an unoccupied cemetery lot or~~
9 ~~part of a lot in any cemetery in the state shall, upon abandonment,~~
10 ~~revert to the city, village, township, or cemetery association having the~~
11 ~~ownership and charge of the cemetery containing such lot or part of a~~
12 ~~lot. The continued failure to maintain or care for a cemetery lot or part~~
13 ~~of a lot for a period of ten years shall create and establish a~~
14 ~~presumption that the same has been abandoned. Abandonment shall not be~~
15 ~~deemed complete unless, after such period of ten years, there shall be~~
16 ~~given by the reversionary owner to the owner of record or, if he or she~~
17 ~~be deceased or his or her whereabouts unknown, to the heirs of such~~
18 ~~deceased person, as far as they are known or can be ascertained with the~~
19 ~~exercise of reasonable diligence, or to one or more of the near relatives~~
20 ~~of such owner of record, whose whereabouts are unknown, notice declaring~~
21 ~~the lot or part of a lot to be abandoned. This notice shall be served as~~
22 ~~provided by subsection (2) of this section.~~

23 ~~(2) The notice, referred to in subsection (1) of this section, may~~
24 ~~be served personally upon the owner or his or her heirs or near relatives~~
25 ~~or may be served by the mailing of the notice by either registered or~~
26 ~~certified mail to the owner or to his or her heirs or near relatives, as~~
27 ~~the case may be, to his, her, or their last-known addresses. In the event~~
28 ~~that the addresses of the owner and his or her heirs and near relatives~~
29 ~~are unknown or cannot be found with reasonable diligence, the notice of~~
30 ~~such abandonment shall be given by publishing the same one time in a~~
31 ~~legal newspaper published in and of general circulation in the county or,~~

1 ~~if none is published in the county, in a legal newspaper of general~~
2 ~~circulation in the county in which the cemetery is located.~~

3 Sec. 2. Section 12-702, Reissue Revised Statutes of Nebraska, is
4 amended to read:

5 12-702 A county, city, or village that is the reversionary owner of
6 a lot, part of a lot, lots, or parts of lots pursuant to section 12-701
7 may sell the same and convey title to such lots or parts of lots. If
8 ~~within one year from the time of serving or publishing the notice~~
9 ~~referred to in section 12-701, the record owner or his heirs or near~~
10 ~~relatives shall give the reversionary owner, referred to in subsection~~
11 ~~(1) of such section, notice in writing that in fact there has been no~~
12 ~~such abandonment and shall pay the cost of service or publication of the~~
13 ~~notice of abandonment, then a presumption of abandonment shall no longer~~
14 ~~exist. In case abandonment has been complete as hereinbefore provided,~~
15 ~~the reversionary owner of the abandoned lot, part of lot, lots, or parts~~
16 ~~of lots may sell the same and convey title thereto. Any funds realized~~
17 ~~from the sale of such lot, part of lot, lots, or parts of lots shall~~
18 ~~constitute a fund to be used solely for the care and upkeep of the used~~
19 ~~portion of such lot, part of lot, lots, or parts of lots and for the~~
20 ~~general maintenance of such cemetery. Such funds may be invested as long~~
21 ~~as such investor acts as a fiduciary and complies with the prudent~~
22 ~~investor rule set forth in sections 30-3883 to 30-3889.~~

23 Sec. 3. Section 17-938, Reissue Revised Statutes of Nebraska, is
24 amended to read:

25 17-938 (1) The mayor and city council or the village board of
26 trustees of a city of the second class or village are hereby empowered to
27 levy a tax not to exceed five and two-tenths cents on each one hundred
28 dollars upon the taxable value of all taxable property in such city or
29 village for any one year for improving, adorning, protecting, and caring
30 for a cemetery as provided in section 17-926.

31 (2) Except as provided in subsection (3) of this section, all

1 certificates to any lot or lots upon which no interments have been made
2 and which have been sold for burial purposes under the provisions of
3 section 17-941 may be declared forfeited and subject to resale if, for
4 more than three consecutive years, all charges and liens as provided
5 under sections 17-926 to 17-947 or by any of the rules, regulations, or
6 bylaws of the association are not promptly paid by the holders of such
7 certificates. All certificates to any lot or lots sold shall contain a
8 forfeiture clause to the effect that if no interment has been made on the
9 lot or lots and all liens and charges have not been paid as provided in
10 this subsection, by ordinance, or in the bylaws of the association, such
11 certificate and the rights under the same may, at the option of the
12 cemetery board, with the approval of the mayor and city council or of the
13 chairperson and village board of trustees, be declared null and void and
14 the lot or lots shall be subject to resale as in the first instance.

15 (3)(a) Except as provided in subdivision (b) of this subsection,
16 when ~~(3) when~~ any lot has been transferred by warranty deed or by a deed
17 conveying a fee simple title, but there has been no burial in any such
18 lot or subdivision thereof and no payment of annual assessments for a
19 period of three years, the cemetery board, with the approval of the mayor
20 and city council or of the chairperson and village board of trustees, may
21 reclaim the unused portion of such lot or subdivision after notifying the
22 record owner or his or her heirs or assigns, if known, by certified mail
23 and publishing notice of its intention to do so. Such notice shall be
24 published once each week for four weeks in a legal newspaper in or of
25 general circulation throughout the county in which the cemetery is
26 located, shall describe the lot or subdivision proposed to be reclaimed,
27 and shall be addressed to the person in whose name such portion stands of
28 record or, if there is no owner of record, to all persons claiming any
29 interest in such lot or subdivision. If no person appears to claim such
30 lot or subdivision and pay all delinquent assessments with interest
31 within fifteen days after the last date of such publication, the cemetery

1 board may by resolution reclaim such lot or subdivision. Such reclamation
2 shall be complete upon a filing of a verified copy of such resolution,
3 together with proof of publication, in the office of the register of
4 deeds.

5 (b) A city of the second class or village that has not levied a tax
6 pursuant to subsection (1) of this section within the preceding five
7 calendar years of a proposed forfeiture, shall, for purposes of
8 forfeiture, reclamation, or reinvestment of a cemetery lot, be governed
9 by section 12-701.

10 Sec. 4. Original sections 12-701, 12-702, and 17-938, Reissue
11 Revised Statutes of Nebraska, are repealed.