

State of South Dakota

NINETY-FOURTH SESSION
LEGISLATIVE ASSEMBLY, 2019

991B0066

SENATE JUDICIARY ENGROSSED NO. **SB 54** 1/31/2019

Introduced by: Senators White, Cammack, Kolbeck, Otten (Ernie), Partridge, and Stalzer and Representatives Chase, Barthel, Duvall, Glanzer, Lake, McCleerey, Peterson (Kent), and York

1 FOR AN ACT ENTITLED, An Act to regulate the use of care and maintenance funds by
2 perpetual care cemeteries.

3 BE IT ENACTED BY THE LEGISLATURE OF THE STATE OF SOUTH DAKOTA:

4 Section 1. That chapter 55-12 be amended by adding a NEW SECTION to read:

5 The proceeds arising from the income transferred to the earnings fund pursuant to § 55-12-8
6 for the care and maintenance of the cemetery may only be used for protecting, preserving,
7 improving, and embellishing the cemetery and its appurtenances; preserving and caring, and
8 marking of abandoned or neglected graves; the repairing of monuments or gravestones; and may
9 not be used for any other purpose.

10 Section 2. That chapter 55-12 be amended by adding a NEW SECTION to read:

11 If the attorney general has reason to believe that a perpetual care cemetery is not using the
12 money in the earnings fund for the purposes listed in section 1 of this Act, the attorney general
13 may investigate the use of the money in the earnings fund. The attorney general may execute in
14 writing and may issue a subpoena upon any person who is believed to have information,



1 documentary material, or physical evidence relevant to an alleged misuse of the money in the
2 earnings fund. The subpoena shall require the person to furnish, under oath or otherwise, a
3 report in writing setting forth the relevant facts and circumstances of which the person has
4 knowledge, or to appear and testify, or to produce relevant documentary material or physical
5 evidence for examination, at a reasonable time and place as stated in the subpoena.

6 Section 3. That chapter 55-12 be amended by adding a NEW SECTION to read:

7 The attorney general may issue a subpoena under § 37-24-14 or an investigative demand
8 under § 37-24-12 to any person and may conduct any hearing in aid of any investigation or
9 inquiry. The attorney general may prescribe the forms governing:

- 10 (1) The conduct of investigations;
- 11 (2) When, what, and to whom information concerning the use of the earnings fund will
12 be released; and
- 13 (3) The conditions under which assurances of voluntary compliance will be accepted.

14 Section 4. That chapter 55-12 be amended by adding a NEW SECTION to read:

15 If any person refuses to obey an investigative demand or subpoena, the attorney general may
16 petition the circuit court to enforce compliance under § 37-24-17.

17 Section 5. That chapter 55-12 be amended by adding a NEW SECTION to read:

18 If the attorney general has reason to believe that any person is using the money in the
19 earnings fund for purposes not related to the care and maintenance of the perpetual care
20 cemetery, the attorney general may bring an action in the name of the state against the person
21 to restrain by temporary or permanent injunction the use of the money in the earnings fund. The
22 notice of the action shall state generally the relief sought and be served at least three days before
23 any hearing in the action.

24 Section 6. That chapter 55-12 be amended by adding a NEW SECTION to read:

1 The court may make any additional orders or judgments as may be necessary to restore to
2 any person in interest any moneys or property, real or personal, that the court finds to have been
3 misused. Additional relief may include the appointment of a receiver whenever it appears to the
4 satisfaction of the court that the defendant threatens or is about to remove, conceal, or dispose
5 of his property to the damage of persons to whom restoration would be made under this Act.

6 Section 7. That chapter 55-12 be amended by adding a NEW SECTION to read:

7 If a receiver is appointed by the court, the receiver may collect, receive, and take into the
8 receiver's possession all the goods and chattels, rights and credits, moneys and effects, land and
9 tenements, books, records, documents, papers, choses in action, bills, notes, and property of
10 every description. If any property has been commingled and the property cannot be identified
11 because of the commingling, the receiver may sell, convey, and assign the property and hold and
12 dispose of any proceeds under the direction of the court.