

SECOND REGULAR SESSION
SENATE COMMITTEE SUBSTITUTE FOR
SENATE BILL NO. 754
95TH GENERAL ASSEMBLY

Reported from the Committee on Jobs, Economic Development and Local Government, February 18, 2010, with recommendation that the Senate Committee Substitute do pass.

3900S.05C

TERRY L. SPIELER, Secretary.

AN ACT

To repeal sections 214.160, 214.270, 214.276, 214.277, 214.283, 214.290, 214.300, 214.310, 214.320, 214.325, 214.330, 214.335, 214.340, 214.345, 214.360, 214.363, 214.365, 214.367, 214.387, 214.392, 214.400, 214.410, 214.500, 214.504, 214.508, 214.512, 214.516, and 214.550, RSMo, and to enact in lieu thereof twenty-nine new sections relating to cemeteries, with penalty provisions.

Be it enacted by the General Assembly of the State of Missouri, as follows:

Section A. Sections 214.160, 214.270, 214.276, 214.277, 214.283, 214.290, 214.300, 214.310, 214.320, 214.325, 214.330, 214.335, 214.340, 214.345, 214.360, 214.363, 214.365, 214.367, 214.387, 214.392, 214.400, 214.410, 214.500, 214.504, 214.508, 214.512, 214.516, and 214.550, RSMo, are repealed and twenty-nine new sections enacted in lieu thereof, to be known as sections 214.160, 214.270, 214.276, 214.277, 214.282, 214.283, 214.300, 214.310, 214.320, 214.325, 214.330, 214.335, 214.340, 214.345, 214.360, 214.363, 214.365, 214.367, 214.387, 214.389, 214.392, 214.400, 214.410, 214.500, 214.504, 214.508, 214.512, 214.516, and 214.550, to read as follows:

214.160. The county commission shall invest or loan said trust fund or funds only in United States government, state, county or municipal bonds, [or] **certificates of deposit**, first real estate mortgages, or deeds of trust. They shall use the net income from said trust fund or funds or so much thereof as is necessary to support and maintain and beautify any public or private cemetery or any particular part thereof which may be designated by the person, persons or firm or association making said gift or bequest. In maintaining or supporting the

EXPLANATION—Matter enclosed in bold-faced brackets [thus] in this bill is not enacted and is intended to be omitted in the law.

8 cemetery or any particular part or portion thereof the commission shall as nearly
9 as possible follow the expressed wishes of the creator of said trust fund.

214.270. As used in sections 214.270 to 214.410, the following terms
2 mean:

3 (1) "Agent" or "authorized agent", any person empowered by the cemetery
4 operator to represent the operator in dealing with the general public, including
5 owners of the burial space in the cemetery;

6 (2) "Burial space", one or more than one plot, grave, mausoleum, crypt,
7 lawn, surface lawn crypt, niche or space used or intended for the interment of the
8 human dead;

9 (3) "Burial merchandise", a monument, marker, memorial, tombstone,
10 headstone, urn, outer burial container, or similar article which may contain
11 specific lettering, shape, color, or design as specified by the purchaser;

12 (4) "Cemetery", property restricted in use for the interment of the human
13 dead by formal dedication or reservation by deed but shall not include any of the
14 foregoing held or operated by the state or federal government or any political
15 subdivision thereof, any incorporated city or town, any county or any religious
16 organization, cemetery association or fraternal society holding the same for sale
17 solely to members and their immediate families;

18 (5) "Cemetery association", any number of persons who shall have
19 associated themselves by articles of agreement in writing as a not-for-profit
20 association or organization, whether incorporated or unincorporated, formed for
21 the purpose of ownership, preservation, care, maintenance, adornment and
22 administration of a cemetery. Cemetery associations shall be governed by a board
23 of directors. Directors shall serve without compensation;

24 (6) "Cemetery operator" or "operator", any person who owns, controls,
25 operates or manages a cemetery;

26 (7) "Cemetery prearranged contract", any contract with a **cemetery or**
27 **cemetery operator** for [goods and services covered by this chapter which includes
28 a sale of burial merchandise in which delivery of merchandise or a valid
29 warehouse receipt under sections 214.270 to 214.550 is deferred pursuant to
30 written instructions from the purchaser. It shall also mean any contract for
31 goods and services covered by sections 214.270 to 214.550 which includes a sale
32 of burial services to be performed at a future date] **burial merchandise or**
33 **burial services covered by sections 214.270 to 214.410 which is entered**
34 **into before the death of the individual for whom the burial**

35 **merchandise or burial services are intended;**

36 (8) "Cemetery service" or "burial service", those services performed by a
37 cemetery owner or operator licensed as an endowed care or nonendowed cemetery
38 including setting a monument or marker, setting a tent, excavating a grave,
39 interment, entombment, inurnment, setting a vault, or other related services
40 within the cemetery;

41 (9) "Columbarium", a building or structure for the inurnment of cremated
42 human remains;

43 (10) "Community mausoleum", a mausoleum containing a substantial area
44 of enclosed space and having either a heating, ventilating or air conditioning
45 system;

46 (11) "Department", department of insurance, financial institutions and
47 professional registration;

48 (12) "Developed acreage", the area which has been platted into grave
49 spaces and has been developed with roads, paths, features, or ornamentations and
50 in which burials can be made;

51 (13) "Director", director of the division of professional registration;

52 (14) "Division", division of professional registration;

53 (15) "Endowed care", the maintenance, repair and care of all burial space
54 subject to the endowment within a cemetery, including any improvements made
55 for the benefit of such burial space. Endowed care shall include the general
56 overhead expenses needed to accomplish such maintenance, repair, care and
57 improvements. Endowed care shall include the terms perpetual care, permanent
58 care, continual care, eternal care, care of duration, or any like term;

59 (16) "Endowed care cemetery", a cemetery, or a section of a cemetery,
60 which represents itself as offering endowed care and which complies with the
61 provisions of sections 214.270 to 214.410;

62 (17) "Endowed care fund", "endowed care trust", or "trust", any cash or
63 cash equivalent, to include any income therefrom, impressed with a trust by the
64 terms of any gift, grant, contribution, payment, devise or bequest to an endowed
65 care cemetery, or its endowed care trust, or funds to be delivered to an endowed
66 care cemetery's trust received pursuant to a contract and accepted by any
67 endowed care cemetery operator or his agent. This definition includes the terms
68 endowed care funds, maintenance funds, memorial care funds, perpetual care
69 funds, or any like term;

70 (18) "Escrow account", an account established in lieu of an endowed care

71 fund as provided under section 214.330 or an account used to hold deposits under
72 section 214.387;

73 (19) "Escrow agent", an attorney, title company, certified public
74 accountant or other person authorized by the division to exercise escrow powers
75 under the laws of this state;

76 (20) "Escrow agreement", an agreement subject to approval by the office
77 between an escrow agent and a cemetery operator or its agent or related party
78 with common ownership, to receive and administer payments under cemetery
79 prearranged contracts sold by the cemetery operator;

80 (21) "Family burial ground", a cemetery in which no burial space is sold
81 to the public and in which interments are restricted to persons related by blood
82 or marriage;

83 (22) "Fraternal cemetery", a cemetery owned, operated, controlled or
84 managed by any fraternal organization or auxiliary organizations thereof, in
85 which the sale of burial space is restricted solely to its members and their
86 immediate families;

87 (23) "Garden mausoleum", a mausoleum without a substantial area of
88 enclosed space and having its crypt and niche fronts open to the
89 atmosphere. Ventilation of the crypts by forced air or otherwise does not
90 constitute a garden mausoleum as a community mausoleum;

91 (24) "Government cemetery", or "municipal cemetery", a cemetery owned,
92 operated, controlled or managed by the federal government, the state or a
93 political subdivision of the state, including a county or municipality or
94 instrumentality thereof;

95 (25) "Grave" or "plot", a place of ground in a cemetery, used or intended
96 to be used for burial of human remains;

97 (26) "Human remains", the body of a deceased person in any state of
98 decomposition, as well as cremated remains;

99 (27) "Inurnment", placing an urn containing cremated remains in a burial
100 space;

101 (28) "Lawn crypt", a burial vault or other permanent container for a
102 casket which is permanently installed below ground prior to the time of the actual
103 interment. A lawn crypt may permit single or multiple interments in a grave
104 space;

105 (29) "Mausoleum", a structure or building for the entombment of human
106 remains in crypts;

107 (30) "Niche", a space in a columbarium used or intended to be used for
108 inurnment of cremated remains;

109 (31) "Nonendowed care cemetery", or "nonendowed cemetery", a cemetery
110 or a section of a cemetery for which no endowed care trust fund has been
111 established in accordance with sections 214.270 to 214.410;

112 (32) "Office", the office of endowed care cemeteries within the division of
113 professional registration;

114 (33) "Owner of burial space", a person to whom the cemetery operator or
115 his authorized agent has transferred the right of use of burial space;

116 (34) "Person", an individual, corporation, partnership, joint venture,
117 association, trust or any other legal entity;

118 (35) "Registry", the list of cemeteries maintained in the division office for
119 public review. The division may charge a fee for copies of the registry;

120 (36) "Religious cemetery", a cemetery owned, operated, controlled or
121 managed by any church, convention of churches, religious order or affiliated
122 auxiliary thereof in which the sale of burial space is restricted solely to its
123 members and their immediate families;

124 (37) "Surface lawn crypt", a sealed burial chamber whose lid protrudes
125 above the land surface;

126 (38) "Total acreage", the entire tract which is dedicated to or reserved for
127 cemetery purposes;

128 (39) "Trustee of an endowed care fund", the separate legal entity
129 **qualified under section 214.330** appointed as trustee of an endowed care fund.

214.276. 1. The division may refuse to issue or renew any license,
2 required pursuant to sections 214.270 to 214.516 for one or any combination of
3 causes stated in subsection 2 of this section. The division shall notify the
4 applicant in writing of the reasons for the refusal and shall advise the applicant
5 of his or her right to file a complaint with the administrative hearing commission
6 as provided by chapter 621, RSMo.

7 2. The division may cause a complaint to be filed with the administrative
8 hearing commission as provided in chapter 621, RSMo, against any holder of any
9 license, required by sections 214.270 to 214.516 or any person who has failed to
10 surrender his or her license, for any one or any combination of the following
11 causes:

12 (1) Use of any controlled substance, as defined in chapter 195, RSMo, or
13 alcoholic beverage to an extent that such use impairs a person's ability to perform

- 14 the work of any profession licensed or regulated by sections 214.270 to 214.516;
- 15 (2) The person has been finally adjudicated and found guilty, or entered
16 a plea of guilty or nolo contendere, in a criminal prosecution pursuant to the laws
17 of any state or of the United States, for any offense reasonably related to the
18 qualifications, functions or duties of any profession licensed or regulated
19 pursuant to sections 214.270 to 214.516, for any offense an essential element of
20 which is fraud, dishonesty or an act of violence, or for any offense involving moral
21 turpitude, whether or not sentence is imposed;
- 22 (3) Use of fraud, deception, misrepresentation or bribery in securing any
23 license, issued pursuant to sections 214.270 to 214.516 or in obtaining permission
24 to take any examination given or required pursuant to sections 214.270 to
25 214.516;
- 26 (4) Obtaining or attempting to obtain any fee, charge or other
27 compensation by fraud, deception or misrepresentation;
- 28 (5) Incompetence, misconduct, gross negligence, fraud, misrepresentation
29 or dishonesty in the performance of the functions or duties of any profession
30 regulated by sections 214.270 to 214.516;
- 31 (6) Violation of, or assisting or enabling any person to violate, any
32 provision of sections 214.270 to 214.516, or any lawful rule or regulation adopted
33 pursuant to sections 214.270 to 214.516;
- 34 (7) Impersonation of any person holding a license or allowing any person
35 to use his or her license;
- 36 (8) Disciplinary action against the holder of a license or other right to
37 practice any profession regulated by sections 214.270 to 214.516 granted by
38 another state, territory, federal agency or country upon grounds for which
39 revocation or suspension is authorized in this state;
- 40 (9) A person is finally adjudged insane or incompetent by a court of
41 competent jurisdiction;
- 42 (10) Assisting or enabling any person to practice or offer to practice any
43 profession licensed or regulated by sections 214.270 to 214.516 who is not
44 registered and currently eligible to practice pursuant to sections 214.270 to
45 214.516;
- 46 (11) Issuance of a license based upon a material mistake of fact;
- 47 (12) Failure to display a valid license;
- 48 (13) Violation of any professional trust or confidence;
- 49 (14) Use of any advertisement or solicitation which is false, misleading or

50 deceptive to the general public or persons to whom the advertisement or
51 solicitation is primarily directed;

52 (15) Willfully and through undue influence selling a burial space,
53 cemetery services or merchandise.

54 3. After the filing of such complaint, the proceedings shall be conducted
55 in accordance with the provisions of chapter 621, RSMo. Upon a finding by the
56 administrative hearing commission that the grounds, provided in subsection 2 of
57 this section, for disciplinary action are met, the division may singly or in
58 combination, censure or place the person named in the complaint on probation on
59 such terms and conditions as the division deems appropriate for a period not to
60 exceed five years, or may suspend, or revoke the license or permit **or may**
61 **impose a penalty allowed by subsection 4 of section 214.410.** No new
62 license shall be issued to the owner or operator of a cemetery or to any
63 corporation controlled by such owner for three years after the revocation of the
64 certificate of the owner or of a corporation controlled by the owner.

65 4. [Operators of all existing endowed care or nonendowed care cemeteries
66 shall, prior to August twenty-eighth following August 28, 2001, apply for a license
67 pursuant to this section. All endowed care or nonendowed care cemeteries
68 operating in compliance with sections 214.270 to 214.516 prior to August
69 twenty-eighth following August 28, 2001, shall be granted a license by the
70 division upon receipt of application.

71 5.] The division may settle disputes arising under subsections 2 and 3 of
72 this section by consent agreement or settlement agreement between the division
73 and the holder of a license. Within such a settlement agreement, the division
74 may singly or in combination impose any discipline or penalties allowed by this
75 section or subsection 4 of section 214.410. Settlement of such disputes shall be
76 entered into pursuant to the procedures set forth in section 621.045, RSMo.

77 **5. Use of the procedures set out in this section shall not preclude**
78 **the application of any other remedy provided by this chapter.**

214.277. 1. Upon application by the division, and the necessary burden
2 having been met, a court of general jurisdiction may grant an injunction,
3 restraining order or other order as may be appropriate to enjoin a person from:

4 (1) Offering to engage or engaging in the performance of any acts or
5 practices for which a certificate of registration or authority, permit or license is
6 required upon a showing that such acts or practices were performed or offered to
7 be performed without a certificate of registration or authority, permit or license;

8 or

9 (2) Engaging in any practice or business authorized by a certificate of
10 registration or authority, permit or license issued pursuant to this chapter upon
11 a showing that the holder presents a substantial probability of serious danger to
12 the health, safety or welfare of any resident of this state or client or patient of the
13 licensee.

14 2. [Any such action shall be commenced either in the county in which
15 such conduct occurred or in the county in which the defendant resides.

16 3.] Any action brought pursuant to this section shall be in addition to and
17 not in lieu of any penalty provided by this chapter and may be brought
18 concurrently with other actions to enforce this chapter.

**214.282. 1. Each contract sold by a cemetery operator for
2 cemetery services or for grave lots, grave spaces, markers, monuments,
3 memorials, tombstones, crypts, niches, mausoleums, or other
4 receptacles shall be voidable by the purchaser and deemed
5 unenforceable unless:**

6 (1) It is in writing;

7 (2) It is executed by a cemetery operator who is in compliance
8 with the licensing provisions of this chapter;

9 (3) It identifies the contract purchaser and identifies the
10 cemetery services or other items to be provided;

11 (4) It identifies the name and address of any trustee or escrow
12 agent that will receive payments made pursuant to the contract under
13 the provisions of sections 214.320, 214.330, or 214.387, if applicable;

14 (5) It contains the name and address of the cemetery operator;
15 and

16 (6) It identifies any grounds for cancellation by the purchaser or
17 by the cemetery operator on default of payment.

18 2. If a cemetery prearranged contract does not substantially
19 comply with the provisions of this section, all payments made under
20 such contract shall be recoverable by the purchaser, or the purchaser's
21 legal representative, from the contract seller or other payee thereof,
22 together with interest at the rate of ten percent per annum and all
23 reasonable costs of collection, including attorneys' fees.

214.283. 1. Any person, entity, association, city, town, village,
2 county or political subdivision that purchases, receives or holds any
3 real estate used for the burial of dead human bodies, excluding a family

4 **burial ground, shall notify the office of the endowed care cemeteries of**
5 **the name, location and address of such real estate on a form approved**
6 **by the office, before October 1, 2010, or within thirty days of**
7 **purchasing, receiving or holding such land or of being notified by the**
8 **office of the requirements of this provision. No fee shall be charged for**
9 **such notification nor shall any penalty be assessed for failure to**
10 **register. This section shall not be deemed to exempt any operator of an**
11 **endowed care cemetery or non-endowed care cemetery from being duly**
12 **licensed as required by this chapter.**

13 **2.** The division shall establish and maintain a registry of cemeteries and
14 the registry shall be available to the public for review at the division office or
15 copied upon request. The division may charge a fee for copies of the register.

16 (1) If, in the course of a land survey of property located in this state, a
17 surveyor licensed pursuant to chapter 327, RSMo, locates any cemetery which has
18 not been previously registered, the surveyor shall file a statement with the
19 division regarding the location of the cemetery. The statement shall be filed on
20 a form as defined by division rule. No fee shall be charged to the surveyor for
21 such filing.

22 (2) Any person, family, group, association, society or county surveyor may
23 submit to the division, on forms provided by the division, the names and locations
24 of any cemetery located in this state for inclusion in the registry. No fee shall be
25 charged for such submissions.

214.300. Any cemetery operator may, after October 13, 1961, qualify to
2 operate a cemetery which has been operated as a nonendowed cemetery for a
3 minimum of two years, as an endowed care cemetery by:

4 (1) So electing in compliance with section 214.280;

5 (2) Establishing an endowed care **trust** fund in cash of one thousand
6 dollars for each acre in said cemetery with a minimum of five thousand dollars
7 and a maximum of twenty-five thousand dollars;

8 (3) Filing the report required by section 214.340.

214.310. 1. Any cemetery operator who elects to operate a new cemetery
2 as an endowed care cemetery or who represents to the public that perpetual,
3 permanent, endowed, continual, eternal care, care of duration or similar care will
4 be furnished cemetery property sold shall create an endowed care **trust** fund and
5 shall deposit a minimum of twenty-five thousand dollars for cemeteries that have
6 in excess of one hundred burials annually or a minimum of five thousand dollars

7 for cemeteries that have one hundred or less burials annually in such fund before
8 selling or disposing of any burial space in said cemetery, or in lieu thereof such
9 cemetery owner may furnish a surety bond issued by a bonding company or
10 insurance company authorized to do business in this state in the face amount of
11 thirty thousand dollars, and such bond shall run to the office of endowed care
12 cemeteries for the benefit of the care **trust** funds held by such cemetery. This
13 bond shall be for the purpose of guaranteeing an accumulation of twenty-five
14 thousand dollars in such care **trust** fund and also for the further purpose of
15 assuring that the cemetery owner shall provide annual perpetual or endowment
16 care in an amount equal to the annual reasonable return on a secured cash
17 investment of twenty-five thousand dollars until twenty-five thousand dollars is
18 accumulated in said endowed care **trust** funds, and these shall be the conditions
19 of such surety bond; provided, however, the liability of the principal and surety
20 on the bond shall in no event exceed thirty thousand dollars. Provided further,
21 that whenever a cemetery owner which has made an initial deposit to the
22 endowed care **trust** fund demonstrates to the satisfaction of the administrator of
23 the office of endowed care cemeteries that more than twenty-five thousand dollars
24 has been accumulated in the endowed care **trust** fund, the cemetery owner may
25 petition the administrator of the office of endowed care cemeteries for an order
26 to dissolve the surety bond requirement, so long as at least twenty-five thousand
27 dollars always remains in the endowed care **trust** fund.

28 2. Construction of a mausoleum, lawn crypt, columbarium or crematorium
29 as part of a cemetery then operated as an endowed care cemetery shall not be
30 considered the establishment of a new cemetery for purposes of this section.

31 3. Any endowed care cemetery which does not maintain a [fully]
32 **adequately** staffed office in the county in which the cemetery is located shall
33 have prominently displayed on the premises a sign clearly stating the operator's
34 name, address and telephone number. If the operator does not reside in the
35 county in which the cemetery is located, the sign shall also state the name,
36 address and telephone number of a resident of the county who is the authorized
37 agent of the operator or the location of an office of the cemetery which is within
38 ten miles of such cemetery. In jurisdictions where ordinances require signs to
39 meet certain specifications, a weatherproof notice containing the information
40 required by this subsection shall be sufficient.

214.320. 1. An operator of an endowed care cemetery shall establish and
2 deposit in an endowed care **trust** fund not less than the following amounts for

3 burial space sold or disposed of, with such deposits to the endowed care **trust**
4 fund to be made [semiannually] **monthly** on all burial space that has been fully
5 paid for to the date of deposit:

6 (1) A minimum of fifteen percent of the gross sales price, or twenty
7 dollars, whichever is greater, for each grave space sold;

8 (2) A minimum of ten percent of the gross sales price of each crypt or
9 niche sold in a community mausoleum, or a minimum of one hundred dollars for
10 each crypt or [ten dollars for each niche sold in a garden mausoleum] **fifty**
11 **dollars for each niche sold in a community mausoleum, whichever is**
12 **greater;**

13 (3) **A minimum of ten percent of the gross sales price of each**
14 **crypt or niche sold in a garden mausoleum, or a minimum of one**
15 **hundred dollars for each crypt or twenty-five dollars for each niche**
16 **sold in a garden mausoleum, whichever is greater;**

17 (4) A minimum of [seventy-five dollars per grave space for] **ten percent**
18 **of the gross sales price of each lawn crypt sold or a minimum of seventy-**
19 **five dollars, whichever is greater.**

20 2. Notwithstanding the provisions of subdivision (2) of subsection 1 of this
21 section, a cemetery operator who has made the initial deposit in trust as required
22 by sections 214.270 to 214.410 from his own funds, and not from funds deposited
23 with respect to sales of burial space, may deposit only one-half the minimum
24 amounts set forth in subdivisions (1) and (2) of subsection 1 of this section, until
25 he shall have recouped his entire initial deposit. Thereafter, he shall make the
26 minimum deposits required under subdivisions (1), (2) [and], (3), **and (4)** of
27 subsection 1 of this section.

28 3. **As required by section 214.340**, each operator of an endowed care
29 cemetery shall[, after August 28, 1990,] file with the division of professional
30 registration, on a form provided by the division, an annual endowed care trust
31 fund report. The operator of any cemetery representing the cemetery, or any
32 portion of the cemetery, as an endowed care cemetery shall make available to the
33 division for inspection or audit at any reasonable time only those cemetery
34 records and trust fund records necessary to determine whether the cemetery's
35 endowed care **trust** fund is in compliance with sections 214.270 to 214.410. Each
36 cemetery operator who has established a [segregated] **escrow** account pursuant
37 to section [214.385] **214.387** shall make available to the division for inspection
38 or audit at any reasonable time those cemetery records and financial institution

39 records necessary to determine whether the cemetery operator is in compliance
40 with the provisions of section [214.385. All documents, records, and work product
41 from any inspections or audits performed by or at the direction of the division
42 shall remain in the possession of the division of professional registration and
43 shall not be sent to the state board of embalmers and funeral directors. No
44 charge shall be made for such inspections or audits] **214.387.**

45 4. [If any endowed care cemetery operator conducts the trust fund
46 accounting and record keeping outside of this state, then such operator shall
47 maintain current and accurate copies of such accounting and record keeping
48 within this state and such copies shall be readily available to the division for
49 inspection or audit purposes.

50 5.] No cemetery operator shall operate or represent to the public by any
51 title, description, or similar terms that a cemetery provides endowed care unless
52 the cemetery is in compliance with the provisions of sections 214.270 to 214.410.

53 **5. A cemetery operator shall be exempt from the provisions of**
54 **chapter 436 for the sale of cemetery services or for grave lots, grave**
55 **spaces, markers, monuments, memorials, tombstones, crypts, niches or**
56 **mausoleums, outer burial containers or other receptacle. A cemetery**
57 **operator shall be prohibited from adjusting or establishing the sales**
58 **price of items with the intent of evading the trusting or escrow**
59 **provisions of this chapter.**

214.325. If the deposits to any endowed care **trust** fund [required by
2 sections 214.270 to 214.410] are less than the total sum required to be set aside
3 and deposited since the effective date of such sections, the cemetery operator
4 shall correct such deficiency by depositing not less than twenty percent of such
5 deficiency each year for five years [following August 28, 1990,] and shall file, on
6 the form provided by the division, a statement outlining the date and amount
7 such deposits were made. If the cemetery operator fails to correct the deficiency
8 **with respect to funds maintained under section 214.330**, the cemetery
9 operator shall thereafter not represent the cemetery as an endowed care
10 cemetery. Any funds held in the cemetery's endowed care trust shall continue to
11 be used for endowed care for that cemetery. The cemetery operator shall remain
12 subject to the provisions of sections 214.270 to 214.410 for any cemetery or any
13 section of the cemetery for which endowed care payments have been collected,
14 subject to the penalties contained in section 214.410, and civil actions as well as
15 subject to any regulations promulgated by the division. **For purposes of this**

16 **section, the term "deficiency" shall mean a deficiency in the amount**
17 **required to be deposited pursuant to section 214.320, or a deficiency**
18 **created by disbursements in excess of what is permitted under section**
19 **214.330 and shall not include or be affected by deficiencies or shortages**
20 **caused by the fluctuating value of investments.**

214.330. 1. [The endowed care fund required by sections 214.270 to
2 214.410 shall be permanently set aside in trust or in accordance with the
3 provisions of subsection 2 of this section. The trustee of the endowed care trust
4 shall be a state- or federally chartered financial institution authorized to exercise
5 trust powers in Missouri and located in this state. The income from the endowed
6 care fund shall be distributed to the cemetery operator at least annually or in
7 other convenient installments. The cemetery operator shall have the duty and
8 responsibility to apply the income to provide care and maintenance only for that
9 part of the cemetery in which burial space shall have been sold and with respect
10 to which sales the endowed care fund shall have been established and not for any
11 other purpose. The principal of such funds shall be kept intact and appropriately
12 invested by the trustee, or the independent investment advisor. An endowed care
13 trust agreement may provide that when the principal in an endowed care trust
14 exceeds two hundred fifty thousand dollars, investment decisions regarding the
15 principal and undistributed income may be made by a federally registered or
16 Missouri-registered independent qualified investment advisor designated by the
17 cemetery owner, relieving the trustee of all liability regarding investment
18 decisions made by such qualified investment advisor. It shall be the duty of the
19 trustee, or the investment advisor, in the investment of such funds to exercise the
20 diligence and care men of ordinary prudence, intelligence and discretion would
21 employ, but with a view to permanency of investment considering probable safety
22 of capital investment, income produced and appreciation of capital
23 investment. The trustee's duties shall be the maintenance of records and the
24 accounting for and investment of moneys deposited by the operator to the
25 endowed care fund. For the purposes of sections 214.270 to 214.410, the trustee
26 or investment advisor shall not be deemed to be responsible for the care, the
27 maintenance, or the operation of the cemetery, or for any other matter relating
28 to the cemetery, including, but not limited to, compliance with environmental
29 laws and regulations. With respect to cemetery property maintained by cemetery
30 care funds, the cemetery operator shall be responsible for the performance of the
31 care and maintenance of the cemetery property owned by the cemetery operator

32 and for the opening and closing of all graves, crypts, or niches for human remains
33 in any cemetery property owned by the cemetery operator.

34 2. If the endowed care cemetery fund is not permanently set aside in a
35 trust fund as required by subsection 1 of this section then the funds shall be
36 permanently set aside in a segregated bank account which requires the signature
37 of the cemetery owner and either the administrator of the office of endowed care
38 cemeteries, or the signature of a licensed practicing attorney with escrow powers
39 in this state as joint signatories for any distribution from the trust fund. No
40 funds shall be expended without the signature of either the administrator of the
41 office of endowed care cemeteries, or a licensed practicing attorney with escrow
42 powers in this state. The account shall be insured by the Federal Deposit
43 Insurance Corporation or comparable deposit insurance and held in the state- or
44 federally chartered financial institution authorized to do business in Missouri and
45 located in this state. The income from the endowed care fund shall be distributed
46 to the cemetery operator at least in annual or semiannual installments. The
47 cemetery operator shall have the duty and responsibility to apply the income to
48 provide care and maintenance only for that part of the cemetery in which burial
49 space shall have been sold and with respect to which sales the endowed care fund
50 shall have been established and not for any other purpose. The principal of such
51 funds shall be kept intact and appropriately invested by the cemetery operator
52 with written approval of either the administrator of the office of endowed care
53 cemeteries or a licensed practicing attorney with escrow powers in this state. It
54 shall be the duty of the cemetery owner in the investment of such funds to
55 exercise the diligence and care a person of reasonable prudence, intelligence and
56 discretion would employ, but with a view to permanency of investment
57 considering probable safety of capital investment, income produced and
58 appreciation of capital investment. The cemetery owner's duties shall be the
59 maintenance of records and the accounting for an investment of moneys deposited
60 by the operator to the endowed care fund. For purposes of sections 214.270 to
61 214.410, the administrator of the office of endowed care cemeteries or the licensed
62 practicing attorney with escrow powers in this state shall not be deemed to be
63 responsible for the care, maintenance, or operation of the cemetery. With respect
64 to cemetery property maintained by cemetery care funds, the cemetery operator
65 shall be responsible for the performance of the care and maintenance of the
66 cemetery property owned by the cemetery operator and for the opening and
67 closing of all graves, crypts, or niches for human remains in any cemetery

68 property owned by the cemetery operator.

69 3. The cemetery operator shall be accountable to the owners of burial
70 space in the cemetery for compliance with sections 214.270 to 214.410.

71 4. All endowed care funds shall be administered in accordance with an
72 endowed care fund agreement. The endowed care fund agreement shall be subject
73 to review and approval by the office of endowed care cemeteries or by a licensed
74 practicing attorney with escrow powers in this state. The endowed care cemetery
75 shall be notified in writing by the office of endowed care cemeteries or by a
76 licensed practicing attorney with escrow powers in this state regarding the
77 approval or disapproval of the endowed care fund agreement and regarding any
78 changes required to be made for compliance with this chapter and the rules and
79 regulations promulgated thereunder. A copy of the proposed endowed care fund
80 agreement shall be submitted to the office of endowed care cemeteries. The office
81 of endowed care cemeteries or a licensed practicing attorney with escrow powers
82 in this state shall notify the endowed care cemetery in writing of approval and
83 of any required change. Any amendment or change to the endowed care fund
84 agreement shall be submitted to the office of endowed care cemeteries or to a
85 licensed practicing attorney with escrow powers in this state for review and
86 approval. Said amendment or change shall not be effective until approved by the
87 office of endowed care cemeteries or by a licensed practicing attorney with escrow
88 powers in this state. All endowed care cemeteries shall be under a continuing
89 duty to file with the office of endowed care cemeteries or with a licensed
90 practicing attorney with escrow powers in this state and to submit for approval
91 any and all changes, amendment, or revisions of the endowed care fund
92 agreement.

93 5. No principal shall be distributed from an endowed care trust fund
94 except to the extent that a unitrust election is in effect with respect to such trust
95 under the provisions of section 469.411, RSMo.] **The endowed care trust fund**
96 **required by sections 214.270 to 214.410 shall be permanently set aside**
97 **in trust or in accordance with the provisions of subsection 2 of this**
98 **section. The trustee of the endowed care trust shall be a state or**
99 **federally chartered financial institution authorized to exercise trust**
100 **powers in Missouri. The contact information for a trust officer or duly**
101 **appointed representative of the trustee with knowledge and access to**
102 **the trust fund accounting and trust fund records must be disclosed to**
103 **the office or its duly authorized representative upon request.**

104 (1) The trust fund records, including all trust fund accounting
105 records, shall be maintained in the state of Missouri at all times or
106 shall be electronically stored so that the records may be made available
107 in the state of Missouri within fifteen business days of receipt of a
108 written request. The operator of an endowed care cemetery shall
109 maintain a current name and address of the trustee and the records
110 custodian for the endowed care trust fund and shall supply such
111 information to the office, or its representative, upon request;

112 (2) Missouri law shall control all endowed care trust funds and
113 the Missouri courts shall have jurisdiction over endowed care trusts
114 regardless of where records may be kept or various administrative
115 tasks may be performed.

116 2. An endowed care trust fund shall be administered in
117 accordance with Missouri law governing trusts, including but not
118 limited to the applicable provisions of chapters 456 and 469, except as
119 specifically provided in this subsection or where the provisions of
120 sections 214.270 to 214.410 provide differently, provided that a
121 cemetery operator shall not in any circumstances be authorized to
122 restrict, enlarge, change, or modify the requirements of this section or
123 the provisions of chapters 456 and 469 by agreement or otherwise.

124 (1) Income and principal of an endowed care trust fund shall be
125 determined under the provisions of law applicable to trusts, except that
126 the provisions of section 469.405 shall not apply.

127 (2) No principal shall be distributed from an endowed care trust
128 fund except to the extent that a unitrust election is in effect with
129 respect to such trust under the provisions of section 469.411.

130 (3) No right to transfer jurisdiction from Missouri under section
131 456.1-108 shall exist for endowed care trusts.

132 (4) All endowed care trusts shall be irrevocable.

133 (5) No trustee shall have the power to terminate an endowed
134 care trust fund under the provisions of section 456.4-414.

135 (6) A unitrust election made in accordance with the provisions
136 of chapter 469 shall be made by the cemetery operator in the terms of
137 the endowed care trust fund agreement itself, not by the trustee.

138 (7) No contract of insurance shall be deemed a suitable
139 investment for an endowed care trust fund.

140 (8) The income from the endowed care fund may be distributed

141 to the cemetery operator at least annually on a date designated by the
142 cemetery operator, but no later than sixty days following the end of the
143 trust fund year. Any income not distributed within sixty days following
144 the end of the trust's fiscal year shall be added to and held as part of
145 the principal of the trust fund.

146 3. The cemetery operator shall have the duty and responsibility
147 to apply the income distributed to provide care and maintenance only
148 for that part of the cemetery designated as an endowed care section
149 and not for any other purpose.

150 4. In addition to any other duty, obligation, or requirement
151 imposed by sections 214.270 to 214.410 or the endowed care trust
152 agreement, the trustee's duties shall be the maintenance of records
153 related to the trust and the accounting for and investment of moneys
154 deposited by the operator to the endowed care trust fund.

155 (1) For the purposes of sections 214.270 to 214.410, the trustee
156 shall not be deemed responsible for the care, the maintenance, or the
157 operation of the cemetery, or for any other matter relating to the
158 cemetery, or the proper expenditure of funds distributed by the trustee
159 to the cemetery operator, including, but not limited to, compliance with
160 environmental laws and regulations.

161 (2) With respect to cemetery property maintained by endowed
162 care funds, the cemetery operator shall be responsible for the
163 performance of the care and maintenance of the cemetery property.

164 5. If the endowed care cemetery fund is not permanently set
165 aside in a trust fund as required by subsection 1 of this section, then
166 the funds shall be permanently set aside in an escrow account in the
167 state of Missouri. Funds in an escrow account shall be placed in an
168 endowed care trust fund under subsection 1 if the funds in the escrow
169 account exceed three hundred fifty thousand dollars, unless otherwise
170 approved by the division for good cause. The account shall be insured
171 by the Federal Deposit Insurance Corporation or comparable deposit
172 insurance and held in a state or federally chartered financial
173 institution authorized to do business in Missouri and located in this
174 state.

175 (1) The interest from the escrow account may be distributed to
176 the cemetery operator at least in annual or semiannual installments,
177 but not later than six months following the calendar year. Any interest

178 not distributed within six months following the end of the calendar
179 year shall be added to and held as part of the principal of the account.

180 (2) The cemetery operator shall have the duty and responsibility
181 to apply the interest to provide care and maintenance only for that part
182 of the cemetery in which burial space shall have been sold and with
183 respect to which sales the escrow account shall have been established
184 and not for any other purpose. The principal of such funds shall be
185 kept intact. The cemetery operator's duties shall be the maintenance
186 of records and the accounting for an investment of moneys deposited
187 by the operator to the escrow account. For purposes of sections 214.270
188 to 214.410, the administrator of the office of endowed care cemeteries
189 shall not be deemed to be responsible for the care, maintenance, or
190 operation of the cemetery. With respect to cemetery property
191 maintained by cemetery care funds, the cemetery operator shall be
192 responsible for the performance of the care and maintenance of the
193 cemetery property owned by the cemetery operator.

194 (3) The division may approve an escrow agent if the escrow
195 agent demonstrates the knowledge, skill, and ability to handle escrow
196 funds and financial transactions and is of good moral character.

197 6. The cemetery operator shall be accountable to the owners of
198 burial space in the cemetery for compliance with sections 214.270 to
199 214.410.

200 7. Excluding funds held in an escrow account, all endowed care
201 trust funds shall be administered in accordance with an endowed care
202 trust fund agreement, which shall be submitted to the office by the
203 cemetery operator for review and approval. The endowed care
204 cemetery shall be notified in writing by the office of endowed care
205 cemeteries regarding the approval or disapproval of the endowed care
206 trust fund agreement and regarding any changes required to be made
207 for compliance with sections 214.270 to 214.410 and the rules and
208 regulations promulgated thereunder.

209 8. All endowed care cemeteries shall be under a continuing duty
210 to file with the office of endowed care cemeteries and to submit for
211 prior approval any and all changes, amendments, or revisions of the
212 endowed care trust fund agreement, at least thirty days before the
213 effective date of such change, amendment, or revision.

214 9. If the endowed care trust fund agreement, or any changes,

215 amendments, or revisions filed with the office, are not disapproved by
216 the office within thirty days after submission by the cemetery operator,
217 the endowed care trust fund agreement, or the related change,
218 amendment, or revision, shall be deemed approved and may be used by
219 the cemetery operator and the trustee. Notwithstanding any other
220 provision of this section, the office may review and disapprove an
221 endowed care trust fund agreement, or any submitted change,
222 amendment, or revision, after the thirty days provided herein or at any
223 other time if the agreement is not in compliance with sections 214.270
224 to 214.410 or the rules promulgated thereunder. Notice of disapproval
225 by the office shall be in writing and delivered to the cemetery operator
226 and the trustee within ten days of disapproval.

227 **10. Funds in an endowed care trust fund or escrow account may**
228 **be commingled with endowed care funds for other endowed care**
229 **cemeteries, provided that the cemetery operator and the trustee shall**
230 **maintain adequate accounting records of the disbursements,**
231 **contributions, and income allocated for each cemetery.**

232 **11. By accepting the trusteeship of an endowed care trust or**
233 **accepting funds as an escrow agent pursuant to sections 214.270 to**
234 **214.410, the trustee or escrow agent submits personally to the**
235 **jurisdiction of the courts of this state and the office of endowed care**
236 **cemeteries regarding the administration of the trust or escrow account.**
237 **A trustee or escrow agent shall consent in writing to the jurisdiction of**
238 **the state of Missouri and the office in regards to the trusteeship or the**
239 **operation of the escrow account and to the appointment of the office of**
240 **secretary of state as its agent for service of process regarding any**
241 **administrative or legal actions relating to the trust or the escrow**
242 **account, if it has no designated agent for service of process located in**
243 **this state. Such consent shall be filed with the office prior to accepting**
244 **funds pursuant to sections 214.270 to 214.410 as trustee or as an escrow**
245 **agent on a form provided by the office by rule.**

214.335. 1. Any endowed care cemetery may require a contribution to the
2 endowed care fund or to a separate memorial care fund for each memorial or
3 monument installed on a grave in the cemetery. Such contribution, if required
4 by a cemetery, shall not exceed twenty cents per square inch of base area, and
5 shall be charged on every installation regardless of the person performing the
6 installation. Each contribution made pursuant to a contract or agreement

7 entered into after August 28, 1990, shall be entrusted and administered pursuant
8 to sections 214.270 to 214.410 for the endowed care fund. Each contribution
9 made pursuant to a contract or agreement entered into before August 28, 1990,
10 shall be governed by the law in effect at the time the contract or agreement was
11 entered into.

12 **2. If the deposits to any endowed care trust fund are less than**
13 **the total sum required to be set aside and deposited since the effective**
14 **date of such sections, the cemetery operator shall correct such**
15 **deficiency by depositing not less than twenty percent of such deficiency**
16 **each year for five years and shall file, on the form provided by the**
17 **division, a statement outlining the date and amount such deposits were**
18 **made. If the cemetery operator fails to correct the deficiency with**
19 **respect to funds maintained under section 214.330, the cemetery**
20 **operator shall thereafter not represent the cemetery as an endowed**
21 **care cemetery. Any funds held in the cemetery's endowed care trust**
22 **shall continue to be used for endowed care for that cemetery. The**
23 **cemetery operator shall remain subject to the provisions of sections**
24 **214.270 to 214.410 for any cemetery or any section of the cemetery for**
25 **which endowed care payments have been collected, subject to the**
26 **penalties contained in section 214.410, and civil actions, as well as**
27 **subject to any regulations promulgated by the division. For purposes**
28 **of this section, the term "deficiency" shall mean a deficiency in the**
29 **amount required to be deposited pursuant to subsection 1 of this**
30 **section, or a deficiency created by disbursements in excess of what is**
31 **permitted under section 214.330 and shall not include or be affected by**
32 **deficiencies or shortages caused by the fluctuating value of**
33 **investments.**

214.340. 1. Each operator of an endowed care cemetery shall maintain at
2 an office in the cemetery or, if the cemetery has no office in the cemetery, at an
3 office within a reasonable distance of the cemetery, the reports of the endowed
4 care **trust** fund's operation for the preceding seven years. Each report shall
5 contain, at least, the following information:

- 6 (1) Name and address of the trustee of the endowed care **trust** fund and
7 the depository, if different from the trustee;
- 8 (2) Balance per previous year's report;
- 9 (3) Principal contributions received since previous report;

- 10 (4) Total earnings since previous report;
- 11 (5) Total distribution to the cemetery operator since the previous report;
- 12 (6) Current balance;
- 13 (7) A statement of all assets listing cash, real or personal property, stocks,
14 bonds, and other assets, showing cost, acquisition date and current market value
15 of each asset;
- 16 (8) Total expenses, excluding distributions to cemetery operator, since
17 previous report; and
- 18 (9) A statement of the cemetery's total acreage and of its developed
19 acreage.

20 2. Subdivisions (1) through (7) of the report described in subsection 1
21 above shall be certified to under oath as complete and correct by a corporate
22 officer of the trustee. Subdivision (8) of such report shall be certified under oath
23 as complete and correct by an officer of the cemetery operator. Both the trustee
24 and cemetery operator or officer shall be subject to the penalty of making a false
25 affidavit or declaration.

26 3. The report shall be placed in the cemetery's office within ninety days
27 of the close of the trust's fiscal year. A copy of this report shall be filed by the
28 cemetery operator with the division of professional registration as condition of
29 license renewal as required by subsection 4 of section 214.275. [The report shall
30 not be sent to the state board of embalmers and funeral directors.]

31 4. Each cemetery operator who establishes [a segregated] **an escrow or**
32 **trust** account pursuant to [subsection 1 of section 214.385] **section 214.387**
33 shall file with the report required under subsection 1 of this section [a
34 segregated] **an escrow or trust** account report that shall provide the following
35 information:

36 (1) The [number of monuments, markers and memorials] **total face**
37 **value of all contracts for burial merchandise and services** that have been
38 deferred for delivery by purchase designation; **and**

39 (2) [The aggregate wholesale cost of all such monuments, markers and
40 memorials; and

41 (3)] The amount on deposit in the [segregated] **escrow or trust** account
42 established pursuant to section [214.385] **214.387**, and the account number **in**
43 **the case of an escrow account.**

214.345. 1. Any cemetery operator who negotiates the sale of burial space
2 in any cemetery located in this state shall provide each prospective owner of

3 burial space a written statement, which may be a separate form or a part of the
4 sales contract, which states and explains in plain language that the burial space
5 is part of an endowed care cemetery; that the cemetery has established and
6 maintains the endowed care **trust** fund required by law; and that the information
7 regarding the fund described in section 214.340 is available to the prospective
8 purchaser. If the burial space is in a nonendowed cemetery, or in a nonendowed
9 section of an endowed care cemetery, the cemetery operator shall state he has
10 elected not to establish an endowed care **trust** fund.

11 2. The operator of each endowed care cemetery shall, upon request, give
12 to the public for retention a copy of the endowed care **trust** fund annual report
13 prepared pursuant to the provisions of subsection 1 of section 214.340.

214.360. No cemetery operator, nor any director, officer or shareholder of
2 any cemetery may borrow or in any other way make use of the endowed care
3 **trust** funds for his own use, directly or indirectly, or for furthering or developing
4 his or any other cemetery, nor may any trustee lend or make such funds available
5 for said purpose or for the use of any operator or any director, officer or
6 shareholder of any cemetery.

214.363. In the event of a cemetery's bankruptcy, insolvency, or
2 assignment for the benefit of creditors, the endowed care **trust** funds shall not
3 be available to any creditor as assets of the cemetery's owner or to pay any
4 expenses of any bankruptcy or similar proceeding, but shall be retained intact to
5 provide for the future maintenance of the cemetery.

214.365. Prior to any action as provided in subsection 2 of section 214.205,
2 and when the division has information that a [public] cemetery is not providing
3 maintenance and care, has been abandoned, or has ceased operation, the division
4 may investigate the cemetery to determine the cemetery's current status. If the
5 division finds evidence that the cemetery is abandoned, is not conducting
6 business, or is not providing maintenance and care, the division may apply to the
7 circuit court for appointment as receiver, trustee, or successor in trust.

214.367. **1. Prior to selling or otherwise disposing of a majority
2 of the business assets of a cemetery, or a majority of its stock or other
3 ownership interest, if a corporation or other organized business entity,
4 the cemetery operator shall provide written notification to the division
5 of its intent at least thirty days prior to the date set for the transfer, or
6 the closing of the sale, or the date set for termination of its
7 business. Such notice is confidential and shall not be considered a**

8 **public record subject to the provisions of chapter 610 until the sale of**
9 **the cemetery has been effectuated. Upon receipt of the written**
10 **notification, the division may take reasonable and necessary action to**
11 **determine that the cemetery operator has made proper plans to assure**
12 **that trust funds or funds held in an escrow account for or on behalf of**
13 **the cemetery will be set aside and used as provided in sections 214.270**
14 **to 214.410, including, but not limited to, an audit or examination of**
15 **books and records. The division may waive the requirements of this**
16 **subsection or may shorten the period of notification for good cause or**
17 **if the division determines in its discretion that compliance with its**
18 **provisions are not necessary.**

19 **2. A cemetery operator may complete the sale, transfer, or**
20 **cessation if the division does not disapprove the transaction within**
21 **thirty days after receiving notice. Nothing in this section shall be**
22 **construed to restrict any other right or remedy vested in the division**
23 **or the attorney general.**

24 **3. A prospective purchaser or transferee of [any endowed care] endowed**
25 **or unendowed cemetery, with the written consent of the cemetery operator, may**
26 **obtain a copy of the cemetery's most recent audit or inspection report from the**
27 **division. The division shall inform the prospective purchaser or transferee,**
28 **within thirty days, whether the cemetery may continue to operate and be**
29 **represented as [an endowed care] a cemetery.**

214.387. 1. [Upon written instructions from the purchaser of burial
2 merchandise or burial services set forth in a cemetery prearranged contract, a
3 cemetery may defer delivery of such burial merchandise or a warehouse receipt
4 for the same under section 214.385, or performance of services, to a date
5 designated by the purchaser, provided the cemetery operator, after deducting
6 sales and administrative costs not to exceed twenty percent of the purchase price,
7 deposits the remaining portion of the purchase price into an escrow or trust
8 account as herein provided, within sixty days following receipt of payment from
9 the purchaser. Funds so deposited pursuant to this section shall be maintained
10 in such account until delivery of the property or the performance of services is
11 made or the contract for the purchase of such property or services is
12 canceled. The account is subject to inspection, examination or audit by the
13 division. No withdrawals may be made from the escrow or trust account
14 established pursuant to this section except as herein provided.

15 2. Upon written instructions from the purchaser of an interment,
16 entombment, or inurnment cemetery service, a cemetery may defer performance
17 of such service to a date designated by the purchaser, provided the cemetery
18 operator, within forty-five days of the date the agreement is paid in full, deposits
19 from its own funds an amount equal to eighty percent of the published retail price
20 into a trusteed account. Funds deposited in a trusteed account pursuant to this
21 section and section 214.385 shall be maintained in such account until delivery of
22 the service is made or the agreement for the purchase of the service is canceled.
23 No withdrawals may be made from the trusteed account established pursuant to
24 this section and section 214.385 except as provided herein. Money in this account
25 shall be invested utilizing the prudent man theory and is subject to audit by the
26 division. Names and addresses of depositories of such money shall be submitted
27 with the annual report.

28 3. Upon the delivery of the interment, entombment, or inurnment
29 cemetery service agreed upon by the cemetery or its agent, or the cancellation of
30 the agreement for the purchase of such service, the cemetery operator may
31 withdraw from the trusteed account an amount equal to (i) the market value of
32 the trusteed account based on the most recent account statement issued to the
33 cemetery operator, times (ii) the ratio the service's deposit in the account bears
34 to the aggregate deposit of all services which are paid in full but not
35 delivered. The trusteed account may be inspected or audited by the division.

36 4. The provisions of this section shall apply to all agreements entered into
37 after August 28, 2002.] **With the exception of sales made pursuant to**
38 **section 214.385, all sales of prearranged burial merchandise and**
39 **services shall be made pursuant to this section.**

40 **2. Upon written instructions from the purchaser of burial**
41 **merchandise or burial services set forth in a cemetery prearranged**
42 **contract, a cemetery may defer delivery of such burial merchandise or**
43 **a warehouse receipt for the same under section 214.385, or performance**
44 **of services, to a date designated by the purchaser, provided the**
45 **cemetery operator, after deducting sales and administrative costs**
46 **associated with the sale, not to exceed twenty percent of the purchase**
47 **price, deposits the remaining portion of the purchase price into an**
48 **escrow or trust account as herein provided, within sixty days following**
49 **receipt of payment from the purchaser. Funds so deposited pursuant**
50 **to this section shall be maintained in such account until delivery of the**

51 **property or the performance of services is made or the contract for the**
52 **purchase of such property or services is cancelled, and fees and costs**
53 **associated with the maintenance of the trust or escrow arrangement**
54 **shall be charged to these funds. The account is subject to inspection,**
55 **examination or audit by the division. No withdrawals may be made**
56 **from the escrow or trust account established pursuant to this section**
57 **except as herein provided.**

58 **3. Each escrow arrangement must comply with the following:**

59 **(1) The escrow agent shall be located in Missouri, authorized to**
60 **exercise escrow powers, and shall maintain the escrow records so that**
61 **they may be accessed and produced for inspection within five business**
62 **days of the agent's receipt of a written request made by the office or its**
63 **duly authorized representative. A cemetery operator shall not serve as**
64 **an escrow agent for the cemetery operator's account nor shall the**
65 **escrow agent be employed by or under common ownership with the**
66 **cemetery operator. The cemetery operator shall maintain a current**
67 **name and address for the escrow agent with the office, and shall obtain**
68 **written approval from the office before making any change in the name**
69 **or address of the escrow agent. Notwithstanding any other provision**
70 **of law, information regarding the escrow agent shall be deemed an**
71 **open record;**

72 **(2) The escrow account funds shall be maintained in depository**
73 **accounts at a Missouri financial institution that provides Federal**
74 **Deposit Insurance Corporation or comparable deposit insurance;**

75 **(3) The escrow arrangement shall be administered by the escrow**
76 **agent pursuant to an agreement approved by the office under the same**
77 **filing and approval procedure as that set forth for endowed care trust**
78 **fund agreements in section 214.330;**

79 **(4) The operator shall establish a separate depository account for**
80 **each cemetery prearranged contract administered pursuant to this**
81 **subsection;**

82 **(5) The division may promulgate by rule a form escrow**
83 **agreement to be used by a cemetery operator operating pursuant to**
84 **this section.**

85 **4. Each trust must comply with the following:**

86 **(1) The trustee shall be a state or federally chartered financial**
87 **institution authorized to exercise trust powers in Missouri, provided**

88 that a foreign financial institution must be approved by the office;

89 (2) The trust fund records, including all trust fund accounting
90 records, shall either be maintained in the state of Missouri or shall be
91 electronically stored so that the records may be made available within
92 fifteen business days of the trustee's receipt of a written request made
93 by the office or its duly authorized representative. The cemetery
94 operator shall maintain a current name and address of the trustee and
95 the records custodian and shall supply such information to the office
96 or its representative upon request;

97 (3) The principal of such funds shall be appropriately invested
98 pursuant to the prudent investor rule under chapter 469, provided that
99 no trust funds shall be invested in any term insurance product;

100 (4) Payments regarding two or more cemetery prearranged
101 contracts may be deposited into and commingled in the same trust, so
102 long as adequate records are made available to the trustee to account
103 for cemetery prearranged contracts on an individual basis with regard
104 to deposits, earnings, distributions, and any taxes;

105 (5) Trust instruments shall be subject to the same filing and
106 approval procedure as that set forth for endowed care trust fund
107 agreements under section 214.330;

108 (6) A trustee may commingle the funds from trusts of unrelated
109 cemetery operators for investment purposes if the trustee has adequate
110 accounting for the allocations, disbursements, payments, and income
111 among the participating trusts.

112 5. The income from escrow accounts, after payment of expenses
113 associated with the arrangement, shall be distributed to the cemetery
114 operator. All other distributions from trusts and escrow accounts shall
115 be made pursuant to forms approved by the office. For performance of
116 a cemetery prearranged contract, a certificate of performance form
117 signed by the cemetery operator shall be required for distribution. For
118 cancellation of a cemetery prearranged contract, a certificate of
119 cancellation form signed by the cemetery operator and the purchaser
120 shall be required for distribution.

121 6. A cemetery prearranged contract is subject to cancellation as
122 follows:

123 (1) At any time before the final disposition of the deceased, or
124 before the services or merchandise described in this section are

125 provided, the purchaser may cancel the contract without cause by
126 delivering written notice thereof to the operator. Within fifteen days
127 after its receipt of such notice, the cemetery operator shall pay to the
128 purchaser a net amount equal to eighty percent of all payments made
129 under the contract. The cemetery operator shall be entitled to keep
130 one-half of the interest earned on trust funds. Upon delivery of the
131 purchaser's receipt for such payment to the escrow agent or trustee,
132 the escrow agent or trustee shall distribute to the cemetery operator
133 from the escrow account or trust an amount equal to all deposits made
134 into the escrow account or trust for the contract;

135 (2) Notwithstanding the provisions of subdivision (1) of this
136 subsection, if a purchaser is eligible, becomes eligible, or desires to
137 become eligible, to receive public assistance under chapter 208 or any
138 other applicable state or federal law, the purchaser may irrevocably
139 waive and renounce his right to cancel the contract pursuant to the
140 provisions of subdivision (1) of this section, which waiver and
141 renunciation shall be made in writing and delivered to the cemetery
142 operator;

143 (3) Notwithstanding the provisions of subdivision (1) of this
144 subsection, any purchaser, within thirty days of receipt of the executed
145 contract, may cancel the contract without cause by delivering written
146 notice thereof to the cemetery operator, and receive a full refund of all
147 payments made on the contract;

148 (4) Notwithstanding the provisions of subdivision (1) of this
149 subsection, once any purchase order is entered for the production or
150 manufacture of burial merchandise, per the purchaser's written
151 request, the purchaser's obligation to pay for said burial merchandise
152 shall be noncancellable;

153 (5) No funds subject to a purchaser's right of cancellation
154 hereunder shall be subject to the claims of the cemetery operator's
155 creditors.

156 7. Burial merchandise sold through a contract with a cemetery
157 or cemetery operator which is entered into after the death of the
158 individual for whom the burial merchandise is intended shall not be
159 subject to any trusting or escrow requirement of this section.

160 8. This section shall apply to all agreements entered into after
161 August 28, 2010.

214.389. 1. The division may direct a trustee, financial institution, or escrow agent to suspend distribution from an endowed care trust fund or escrow account if the cemetery operator does not have a current and active cemetery operator license, has failed to file an annual report, or if, after an audit or examination, the division determines there is a deficiency in an endowed care trust fund or escrow account maintained under section 214.330 and the cemetery operator has failed to file a corrective action plan detailing how the deficiency shall be remedied. For purposes of this section, a deficiency shall only be deemed to exist if, after an audit or examination, the division determines a cemetery operator has failed to deposit the total aggregate of funds required to be deposited in trust or an escrow account pursuant to section 214.320 or subsection 1 of section 214.335, or has received disbursements from the trust or escrow account in excess of what is permitted under section 214.330. No deficiency shall be deemed to be created by fluctuations in the value of investments held in trust or escrow.

2. The division shall provide written notification to the cemetery operator and the trustee, financial institution, or escrow agent within fourteen days of discovering a potential violation as described in this section. Upon receipt of written notification from the division, the cemetery operator shall have sixty days to cure any alleged violations or deficiencies cited in the notification without a suspension of distribution. If, after the sixty-day time period, the division feels the cemetery has not cured the alleged violations or deficiencies cited in the notification, the division may send a notice of suspension to the cemetery operator that the division is ordering a suspension of distribution as described in this section. In the event of a suspension of distribution, the amount of any distribution suspended shall become principal, with credit against the deficiency, unless the cemetery operator files an appeal with a court of competent jurisdiction or with the administrative hearing commission, as provided herein. In the event of an appeal, a cemetery operator may request the court or administrative hearing commission stay the suspension of distribution after a showing of necessity and good cause or authorize payment from the endowed care trust fund or escrow account for necessary expenses from any amount subject to distribution.

38 **3. Upon receipt of an order from the division suspending**
39 **distribution pursuant to this section, a trustee, financial institution, or**
40 **escrow agent shall immediately suspend distribution as required by the**
41 **order. A trustee, financial institution, or escrow agent shall be exempt**
42 **from liability for failure to distribute funds as ordered by the division.**

43 **4. A cemetery operator may appeal an order suspending**
44 **distribution pursuant to this section to the administrative hearing**
45 **commission. The administrative hearing commission shall receive**
46 **notice of such appeal within thirty days from the date the notice of**
47 **suspension was mailed by certified mail. Failure of a person whose**
48 **license was suspended to notify the administrative hearing commission**
49 **of his or her intent to appeal waives all rights to appeal the**
50 **suspension. Upon notice of such person's intent to appeal, a hearing**
51 **shall be held before the administrative hearing commission pursuant**
52 **to chapter 621.**

53 **5. A cemetery operator may apply for reinstatement of**
54 **distributions upon demonstration that the deficiencies or other**
55 **problems have been cured or that the operator has otherwise come into**
56 **compliance.**

57 **6. The division may promulgate rules to implement the**
58 **provisions of this section. Any rule or portion of a rule, as that term is**
59 **defined in section 536.010, that is created under the authority delegated**
60 **in this section shall become effective only if it complies with and is**
61 **subject to all of the provisions of chapter 536, and, if applicable, section**
62 **536.028. This section and chapter 536 are nonseverable and if any of**
63 **the powers vested with the general assembly pursuant to chapter 536,**
64 **to review, to delay the effective date, or to disapprove and annul a rule**
65 **are subsequently held unconstitutional, then the grant of rulemaking**
66 **authority and any rule proposed or adopted after August 28, 2010, shall**
67 **be invalid and void.**

214.392. 1. The division shall:

2 (1) Recommend prosecution for violations of the provisions of sections
3 214.270 to 214.410 to the appropriate prosecuting, circuit attorney or to the
4 attorney general;

5 (2) Employ, within limits of the funds appropriated, such employees as are
6 necessary to carry out the provisions of sections 214.270 to 214.410;

7 (3) Be allowed to convey full authority to each city or county governing

8 body the use of inmates controlled by the department of corrections and the board
9 of probation and parole to care for abandoned cemeteries located within the
10 boundaries of each city or county;

11 (4) Exercise all budgeting, purchasing, reporting and other related
12 management functions;

13 (5) **Be authorized, within the limits of the funds appropriated to**
14 **conduct investigations, examinations, or audits to determine**
15 **compliance with sections 214.270 to 214.410;**

16 (6) The division may promulgate rules necessary to implement the
17 provisions of sections 214.270 to 214.516, including but not limited to:

18 (a) Rules setting the amount of fees authorized pursuant to sections
19 214.270 to 214.516. The fees shall be set at a level to produce revenue that shall
20 not substantially exceed the cost and expense of administering sections 214.270
21 to 214.516. All moneys received by the division pursuant to sections 214.270 to
22 214.516 shall be collected by the director who shall transmit such moneys to the
23 department of revenue for deposit in the state treasury to the credit of the
24 endowed care cemetery audit fund created in section 193.265, RSMo;

25 (b) Rules to administer the inspection and audit provisions of the endowed
26 care cemetery law;

27 (c) Rules for the establishment and maintenance of the cemetery registry
28 pursuant to section 214.283.

29 2. Any rule or portion of a rule, as that term is defined in section 536.010,
30 RSMo, that is created under the authority delegated in this section shall become
31 effective only if it complies with and is subject to all of the provisions of chapter
32 536, RSMo, and, if applicable, section 536.028, RSMo. This section and chapter
33 536, RSMo, are nonseverable and if any of the powers vested with the general
34 assembly pursuant to chapter 536, RSMo, to review, to delay the effective date
35 or to disapprove and annul a rule are subsequently held unconstitutional, then
36 the grant of rulemaking authority and any rule proposed or adopted after August
37 28, 2001, shall be invalid and void.

214.400. Sections 214.270 to 214.410 shall be known as the "Cemetery
2 Endowed Care **Trust** Fund Law".

214.410. 1. Any cemetery operator who shall willfully violate any
2 provisions of sections 214.270 to 214.410 for which no penalty is otherwise
3 prescribed shall be deemed guilty of a misdemeanor and upon conviction thereof
4 shall be fined a sum not to exceed five hundred dollars or shall be confined not

5 more than six months or both.

6 2. Any cemetery operator who shall willfully violate any provision of
7 [section] **sections** 214.320, 214.330, 214.335, 214.340, 214.360 [or], 214.385, **or**
8 **214.387** shall be deemed guilty of a class D felony and upon conviction thereof
9 shall be fined a sum not to exceed ten thousand dollars or shall be confined not
10 more than five years or both. This section shall not apply to cemeteries or
11 cemetery associations which do not sell lots in the cemetery.

12 3. Any trustee who shall willfully violate any applicable provisions of
13 sections 214.270 to 214.410 shall have committed an unsafe and unsound banking
14 practice and shall be penalized as authorized by chapters 361 and 362,
15 RSMo. This subsection shall be enforced exclusively by the Missouri division of
16 finance for state chartered institutions and the Missouri attorney general for
17 federally chartered institutions.

18 4. Any person who shall willfully violate any provision of section 214.320,
19 214.330, 214.335, 214.340, 214.360 or 214.385 or violates any rule, regulation or
20 order of the division may, in accordance with the regulations issued by the
21 division, be assessed an administrative penalty by the division. The penalty shall
22 not exceed five thousand dollars for each violation and each day of the continuing
23 violation shall be deemed a separate violation for purposes of administrative
24 penalty assessment. However, no administrative penalty may be assessed until
25 the person charged with the violation has been given the opportunity for a
26 hearing on the violation. Penalty assessments received shall be deposited in the
27 endowed care cemetery audit fund created in section 193.265, RSMo.

214.500. Any cemetery located in a city [not within a county,] which has
2 become the property of such city pursuant to section 214.205 or a public tax sale
3 may be sold to another cemetery operator or a not-for-profit corporation which is
4 unrelated to the previous cemetery operator.

214.504. Any cemetery operator who purchases a cemetery from a city [not
2 within a county] pursuant to sections 214.500 to 214.516 shall not be liable for
3 any wrongful interments or errors made in the sale of plots prior to the cemetery
4 operator's purchase of the cemetery, nor shall such cemetery operator be liable
5 for multiple ownership of plots sold by such cemetery operator due to a lack of
6 adequate records in such cemetery operator's possession at the time of such
7 cemetery operator's purchase of such cemetery from the city, provided the
8 cemetery operator offers a plot of equal value for the interment, if such party can
9 prove ownership of the right to bury a person by presenting a contract for the

10 right to burial.

214.508. Any cemetery operator who purchases a cemetery from a city [not
2 within a county] shall not be held liable or responsible for any conditions existing
3 or actions taken which occurred prior to the cemetery operator's purchase from
4 such city; except that, the exemption provided in this section shall not relieve any
5 previous owner or wrongdoer for their actions related to such cemetery.

214.512. Any subsequent cemetery owner after a city [not within a
2 county] shall be exempt from the provisions of section 214.325 and section
3 214.410 for any deficiency existing prior to such city's ownership; except that,
4 such exemption shall not relieve any previous cemetery owners or wrongdoers
5 from the provisions of such sections.

214.516. Any cemetery owner subsequent to a city [not within a county],
2 regardless of whether such cemetery was previously registered as an endowed
3 care cemetery, held itself out to be an endowed care cemetery or was a
4 nonendowed care cemetery, shall comply with section 214.310 and register such
5 cemetery as an endowed care cemetery as if it were a newly created cemetery
6 with no interments at the time of such registration. Any contracts for the right
7 of burial sold after compliance with section 214.310 and all subsequent action of
8 a subsequent cemetery owner shall comply fully with the provisions of sections
9 214.270 to 214.410.

214.550. 1. For purposes of this section, the following terms mean:

2 (1) "Cremains", the [ashes that remain after cremation of a human corpse]
3 **remains of a human corpse after cremation;**

4 (2) "Operator", a church that owns and maintains a religious cemetery;

5 (3) "Religious cemetery", a cemetery owned, operated, controlled, or
6 managed by any church that has or would qualify for federal tax-exempt status
7 as a nonprofit religious organization pursuant to section 501(c) of the Internal
8 Revenue Code as amended;

9 (4) "Scatter garden", a location for the spreading of cremains set aside
10 within a cemetery.

11 2. It shall be lawful for any operator of a religious cemetery adjacent to
12 a church building or other building regularly used as a place of worship to
13 establish a scatter garden for the purpose of scattering human cremains.

14 3. The operator of any religious cemetery containing a scatter garden shall
15 maintain, protect, and supervise the scatter garden, and shall be responsible for
16 all costs incurred for such maintenance, protection, and supervision. Such

17 operator shall also maintain a record of all cremains scattered in the scatter
18 garden that shall include the name, date of death, and Social Security number of
19 each person whose cremains are scattered, and the date the cremains were
20 scattered.

21 4. A scatter garden established pursuant to this section shall be
22 maintained by the operator of the religious cemetery for as long as such operator
23 is in existence. Upon dissolution of such operator, all records of cremains shall
24 be transferred to the clerk of the city, town, or village in which the scatter garden
25 is located, or if the scatter garden is located in any unincorporated area, to the
26 county recorder.

[214.290. Any cemetery operator who within ninety days
2 from the effective date of sections 214.270 to 214.410 elects to
3 operate a cemetery which exists on the effective date of sections
4 214.270 to 214.410 as an endowed care cemetery or who represents
5 to the public that perpetual, permanent, endowed, continual,
6 eternal care, care of duration or similar care will be furnished
7 cemetery property sold, shall before selling or disposing of any
8 interment space or lots in said cemetery after the date of such
9 election, establish a minimum endowed care and maintenance fund
10 in cash in the amount required by section 214.300 unless an
11 endowed care fund is already in existence to which regular deposits
12 have been made (whether or not the fund then existing shall be in
13 the minimum amount required under section 214.300).]

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