

SECOND REGULAR SESSION

SENATE BILL NO. 892

91ST GENERAL ASSEMBLY

INTRODUCED BY SENATOR KENNEY.

Read 1st time January 9, 2002, and 1,000 copies ordered printed.

TERRY L. SPIELER, Secretary.

3739S.011

AN ACT

To repeal sections 214.270 and 214.387, RSMo, relating to cemeteries, and to enact in lieu thereof two new sections relating to the same subject.

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

Section A. Sections 214.270 and 214.387, RSMo, are repealed and two new sections enacted in lieu thereof, to be known as sections 214.270 and 214.387, to read as follows:

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

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

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

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

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

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

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

(6) "Cemetery service", those services performed by a cemetery owner or operator licensed pursuant to this chapter as an endowed care cemetery that do not require a licensed funeral director to be present, including, but not limited to, setting a monument, setting a tent, excavating a grave, or setting a vault, but shall not include burial services such as the funeral director's supervisory role of a graveside funeral ceremony;

[(6)] **(7)** "Columbarium", a building or structure for the inurnment of cremated human remains;

[(7)] **(8)** "Community mausoleum", a mausoleum containing a substantial area of enclosed space and having either a heating, ventilating or air conditioning system;

[(8)] **(9)** "Department", department of economic development;

[(9)] **(10)** "Developed acreage", the area which has been platted into grave spaces and has been developed with roads, paths, features, or ornamentations and in which burials can be made;

[(10)] **(11)** "Director", director of the division of professional registration;

[(11)] **(12)** "Division", division of professional registration;

[(12)] **(13)** "Endowed care", the maintenance, repair and care of all burial space subject to the endowment within a cemetery, including any improvements made for the benefit of such burial space. Endowed care shall include the general overhead expenses needed to accomplish such maintenance, repair, care and improvements. Endowed care shall include the terms perpetual care, permanent care, continual care, eternal care, care of duration, or any like term;

[(13)] **(14)** "Endowed care cemetery", a cemetery, or a section of a cemetery, which represents itself as offering endowed care and which complies with the provisions of sections 214.270 to 214.410;

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

[(15)] **(16)** "Family burial ground", a cemetery in which no burial space is sold to the public and in which interments are restricted to persons related by blood or marriage;

[(16)] **(17)** "Fraternal cemetery", a cemetery owned, operated, controlled or managed by any fraternal organization or auxiliary organizations thereof, in which the sale of burial space

is restricted solely to its members and their immediate families;

[(17)] **(18)** "Garden mausoleum", a mausoleum without a substantial area of enclosed space and having its crypt and niche fronts open to the atmosphere. Ventilation of the crypts by forced air or otherwise does not constitute a garden mausoleum as a community mausoleum;

[(18)] **(19)** "Government cemetery", or "municipal cemetery", a cemetery owned, operated, controlled or managed by the federal government, the state or a political subdivision of the state, including a county or municipality or instrumentality thereof;

[(19)] **(20)** "Grave" or "plot", a place of ground in a cemetery, used or intended to be used for burial of human remains;

[(20)] **(21)** "Human remains", the body of a deceased person in any state of decomposition, as well as cremated remains;

[(21)] **(22)** "Inurnment", placing an urn containing cremated remains in a burial space;

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

[(23)] **(24)** "Mausoleum", a structure or building for the entombment of human remains in crypts;

[(24)] **(25)** "Niche", a space in a columbarium used or intended to be used for inurnment of cremated remains;

[(25)] **(26)** "Nonendowed care cemetery", or "nonendowed cemetery", a cemetery or a section of a cemetery for which no endowed care fund has been established in accordance with sections 214.270 to 214.410;

[(26)] **(27)** "Owner of burial space", a person to whom the cemetery operator or his authorized agent has transferred the right of use of burial space;

[(27)] **(28)** "Person", an individual, corporation, partnership, joint venture, association, trust or any other legal entity;

[(28)] **(29)** "Registry", the list of cemeteries maintained in the division office for public review. The division may charge a fee for copies of the registry;

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

[(30)] **(31)** "Surface lawn crypt", a sealed burial chamber whose lid protrudes above the land surface;

[(31)] **(32)** "Total acreage", the entire tract which is dedicated to or reserved for cemetery purposes;

[(32)] **(33)** "Trustee of an endowed care fund", the separate legal entity appointed as trustee of an endowed care fund.

214.387. 1. Upon written instructions from the purchaser of a monument[,]; marker [or]; memorial[,]; **or interment, entombment, or inurnment cemetery service**, a cemetery may defer delivery of such property **or performance of such service** to a date designated by the purchaser, provided the cemetery operator, within forty-five days of the date [the property] **the agreement** is paid in full, deposits from its own funds an amount equal to one hundred ten percent of such property's wholesale cost, **if property, or fifteen percent of the published retail price if services** into a segregated account. Funds deposited in a segregated account pursuant to this section and section 214.385 shall be maintained in such account until delivery of the property **or service** is made or the [contract] **agreement** for the purchase of such property **or service** is canceled. No withdrawals may be made from the cemetery operator's segregated account established pursuant to this section and section 214.385 except as provided herein. The cemetery operator shall not commingle any other of its funds with the deposits made to the segregated account. Money in this account shall be invested utilizing the "prudent man theory" and is subject to audit by the division. Names and addresses of depositories of such money shall be submitted with the annual report.

2. If at the end of a calendar year the market value of the cemetery operator's segregated account exceeds the then current wholesale cost of all paid-in-full property **and fifteen percent of all paid-in-full services** which [has] **have** not been delivered, the cemetery operator may withdraw from the segregated account all realized income earned by such account. If at the end of a calendar year the market value of the cemetery operator's segregated account is less than the then current wholesale cost of all paid-in-full property **and fifteen percent of all paid-in-full services** which [has] **have** not been delivered, the cemetery operator shall only withdraw the realized income in excess of (i) the segregated account's market value at year end, plus (ii) all realized income accrued to the segregated account minus (iii) the wholesale cost of all paid-in-full property **and fifteen percent of all paid-in-full services** which [has] **have** not been delivered.

3. Upon the delivery of a monument[,]; marker [or]; memorial; [sold] **or interment, entombment, or inurnment cemetery service agreed upon** by the cemetery or its agent, or the cancellation of the [contract] **agreement** for the purchase of such property **or service**, the cemetery operator may withdraw from the segregated account an amount equal to (i) the market value of the segregated account based on the most recent account statement issued to the cemetery operator, times (ii) the ratio the delivered property's **or service's** deposit in the account bears to the aggregate deposit of all property **and services** which [is] **are** paid in full but not delivered. The segregated account may be inspected or audited by the division.

4. The provisions of this section shall apply to all agreements entered into after August 28, 2002.

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