

FIRST REGULAR SESSION

SENATE BILL NO. 416

95TH GENERAL ASSEMBLY

INTRODUCED BY SENATORS DEMPSEY AND DAYS.

Read 1st time February 23, 2009, and ordered printed.

TERRY L. SPIELER, Secretary.

1863S.011

AN ACT

To repeal sections 214.270, 214.276, 214.277, 214.280, 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, 214.385, 214.387, 214.392, 214.400, 214.410, 214.455, 214.500, 214.504, 214.508, 214.512, 214.516, and 214.550, RSMo, and to enact in lieu thereof thirty-one 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 214.270, 214.276, 214.277, 214.280, 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, 214.385, 214.387, 214.392, 214.400, 214.410, 214.455, 214.500, 214.504, 214.508, 214.512, 214.516, and 214.550, RSMo, are repealed and thirty-one new sections enacted in lieu thereof, to be known as sections 214.270, 214.276, 214.277, 214.280, 214.282, 214.283, 214.300, 214.310, 214.320,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, 214.385, 214.387, 214.389, 214.392, 214.400, 214.410, 214.455, 214.500, 214.504, 214.508, 214.512, 214.516, and 214.550, 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,

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

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,**
10 **tombstone, headstone, urn, outer burial container, or similar article**
11 **which may contain specific lettering, shape, color, or design as**
12 **specified by the purchaser;**

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

19 [(4)] (5) "Cemetery association", any number of persons who shall have
20 associated themselves by articles of agreement in writing as a not-for-profit
21 association or organization, whether incorporated or unincorporated, formed for
22 the purpose of ownership, preservation, care, maintenance, adornment and
23 administration of a cemetery. Cemetery associations shall be governed by a board
24 of directors. Directors shall serve without compensation;

25 [(5)] (6) "Cemetery operator" or "operator", any person who owns,
26 controls, operates or manages a cemetery;

27 [(6)] (7) **"Cemetery prearranged contract", any contract with a**
28 **cemetery operator for goods and services covered by this chapter**
29 **which includes a sale of burial merchandise in which delivery of**
30 **merchandise or a valid warehouse receipt under sections 214.270 to**
31 **214.550 is deferred pursuant to written instructions from the purchaser.**
32 **It shall also mean any contract for goods and services covered by**
33 **sections 214.270 to 214.550 which includes a sale of burial services to be**
34 **performed at a future date;**

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

40 [(7)] (9) "Columbarium", a building or structure for the inurnment of
41 cremated human remains;

42 [(8)] (10) "Community mausoleum", a mausoleum containing a

43 substantial area of enclosed space and having either a heating, ventilating or air
44 conditioning system;

45 **(11) "Cremains" or "cremated remains", the remains of a human**
46 **corpse after cremation;**

47 **[(9)] (12) "Department",** department of insurance, financial institutions
48 and professional registration;

49 **[(10)] (13) "Developed acreage",** the area which has been platted into
50 grave spaces and has been developed with roads, paths, features, or
51 ornamentations and in which burials can be made;

52 **[(11)] (14) "Director",** director of the division of professional registration;

53 **[(12)] (15) "Division",** division of professional registration;

54 **[(13)] (16) "Endowed care",** the maintenance, repair and care of all burial
55 space subject to the endowment within a cemetery, including any improvements
56 made for the benefit of such burial space. Endowed care shall include the general
57 overhead expenses needed to accomplish such maintenance, repair, care and
58 improvements. Endowed care shall include the terms perpetual care, permanent
59 care, continual care, eternal care, care of duration, or any like term;

60 **[(14)] (17) "Endowed care cemetery",** a cemetery, or a section of a
61 cemetery, which represents itself as offering endowed care and which complies
62 with the provisions of sections 214.270 to 214.410;

63 **[(15)] (18) "Endowed care trust fund",** "endowed care trust", or "trust",
64 any cash or cash equivalent, to include any income therefrom, impressed with a
65 trust by the terms of any gift, grant, contribution, payment, devise or bequest to
66 an endowed care cemetery, or its endowed care trust, or funds to be delivered to
67 an endowed care cemetery's trust received pursuant to a contract and accepted
68 by any endowed care cemetery operator or his agent. This definition includes the
69 terms endowed care funds, maintenance funds, memorial care funds, perpetual
70 care funds, or any like term;

71 **(19) "Escrow account",** an account established in lieu of an
72 **endowed care trust fund as provided under section 214.330 or an**
73 **account used to hold deposits under section 214.387;**

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

77 **(21) "Escrow agreement",** an agreement subject to approval by the
78 **office between an escrow agent and a cemetery operator or its agent or**

79 **related party with common ownership, to receive and administer**
80 **payments under cemetery prearranged contracts sold by the cemetery**
81 **operator;**

82 [(16)] **(22)** "Family burial ground", a cemetery in which no burial space
83 is sold to the public and in which interments are restricted to persons related by
84 blood or marriage;

85 [(17)] **(23)** "Fraternal cemetery", a cemetery owned, operated, controlled
86 or managed by any fraternal organization or auxiliary organizations thereof, in
87 which the sale of burial space is restricted solely to its members and their
88 immediate families;

89 [(18)] **(24)** "Garden mausoleum", a mausoleum without a substantial area
90 of enclosed space and having its crypt and niche fronts open to the
91 atmosphere. Ventilation of the crypts by forced air or otherwise does not
92 constitute a garden mausoleum as a community mausoleum;

93 [(19)] **(25)** "Government cemetery", or "municipal cemetery", a cemetery
94 owned, operated, controlled or managed by the federal government, the state or
95 a political subdivision of the state, including a county or municipality or
96 instrumentality thereof;

97 [(20)] **(26)** "Grave" or "plot", a place of ground in a cemetery, used or
98 intended to be used for burial of human remains;

99 [(21)] **(27)** "Human remains", the body of a deceased person in any state
100 of decomposition, as well as cremated remains;

101 [(22)] **(28)** "Inurnment", placing an urn containing cremated remains in
102 a burial space;

103 [(23)] **(29)** "Lawn crypt", a burial vault or other permanent container for
104 a casket which is permanently installed below ground prior to the time of the
105 actual interment. A lawn crypt may permit single or multiple interments in a
106 grave space;

107 [(24)] **(30)** "Mausoleum", a structure or building for the entombment of
108 human remains in crypts;

109 [(25)] **(31)** "Niche", a space in a columbarium used or intended to be used
110 for inurnment of cremated remains;

111 [(26)] **(32)** "Nonendowed care cemetery", or "nonendowed cemetery", a
112 cemetery or a section of a cemetery for which no endowed care **trust** fund has
113 been established in accordance with sections 214.270 to 214.410;

114 **(33) "Office", the office of endowed care cemeteries within the**

115 **division of professional registration;**

116 [(27)] (34) "Owner of burial space", a person to whom the cemetery
117 operator or his authorized agent has transferred the right of use of burial space;

118 [(28)] (35) "Person", an individual, corporation, partnership, joint
119 venture, association, trust or any other legal entity;

120 [(29)] (36) "Registry", the list of cemeteries maintained in the division
121 office for public review. The division may charge a fee for copies of the registry;

122 [(30)] (37) "Religious cemetery", a cemetery owned, operated, controlled
123 or managed by any church, convention of churches, religious order or affiliated
124 auxiliary thereof in which the sale of burial space is restricted solely to its
125 members and their immediate families;

126 (38) "Scatter garden", a location for the spreading of cremains set
127 aside within a cemetery;

128 [(31)] (39) "Surface lawn crypt", a sealed burial chamber whose lid
129 protrudes above the land surface;

130 [(32)] (40) "Total acreage", the entire tract which is dedicated to or
131 reserved for cemetery purposes;

132 [(33)] (41) "Trustee of an endowed **trust** care fund", the separate legal
133 entity appointed as trustee of an endowed care **trust** 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 such
15 conduct occurred, **in Cole County**, or in the county in which the defendant
16 resides.

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

214.280. 1. Operators of all existing cemeteries shall, prior to August
20 twenty-eighth following August 28, 1994, elect to operate each cemetery as an
3 endowed care cemetery as defined in subdivision [(12)] **(17)** of section 214.270
4 and shall register such intention with the division and remit the required
5 registration fee or, failing such election, shall operate each cemetery for which
6 such election is not made as a nonendowed cemetery without regard to
7 registration fees or penalties. Operators of all cemeteries hereafter established
8 shall, within ninety days from the establishment thereof, elect to operate each
9 cemetery as an "endowed care cemetery", or as a "nonendowed cemetery". Such
10 election for newly established cemeteries shall be filed with the division, on a
11 form provided by the division. Any such election made subsequent to August 28,
12 1994, shall be accompanied by a filing fee set by the division, and such fee shall
13 be deposited in the endowed care cemetery audit fund as defined in section
14 193.265, RSMo. The fee authorized in this subsection shall not be required from
15 an existing nonendowed cemetery.

16 2. The division may adopt rules establishing the conditions and
17 procedures governing the circumstances where an endowed care cemetery elects
18 to operate as a nonendowed care cemetery. In the event an endowed care
19 cemetery elects to operate as a nonendowed care cemetery, the division shall
20 make every effort to require such cemetery to meet all contractual obligations for
21 the delivery of services entered into prior to it reverting to the status of a
22 nonendowed cemetery.

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 receptacles**
4 **shall be voidable by the purchaser and deemed unenforceable unless:**

5 **(1) It is in writing;**

6 **(2) It is executed by a cemetery operator who is in compliance**

7 with the licensing provisions of this chapter;

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

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

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

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

17 2. If a cemetery prearranged contract does not substantially
18 comply with the provisions of this section, all payments made under
19 such contract shall be recoverable by the purchaser, or the purchaser's
20 legal representative, from the contract seller or other payee thereof,
21 together with interest at the rate of ten percent per annum and all
22 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, 2009, 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 funds held by such cemetery. This bond
13 shall be for the purpose of guaranteeing an accumulation of twenty-five thousand
14 dollars in such care fund and also for the further purpose of assuring that the
15 cemetery owner shall provide annual perpetual or endowment care in an amount
16 equal to the annual reasonable return on a secured cash investment of
17 twenty-five thousand dollars until twenty-five thousand dollars is accumulated
18 in said endowed care **trust** funds, and these shall be the conditions of such surety
19 bond; provided, however, the liability of the principal and surety on the bond
20 shall in no event exceed thirty thousand dollars. Provided further, that whenever
21 a cemetery owner which has made an initial deposit to the endowed care **trust**
22 fund demonstrates to the satisfaction of the administrator of the office of endowed
23 care cemeteries that more than twenty-five thousand dollars has been
24 accumulated in the endowed care **trust** fund, the cemetery owner may petition

25 the administrator of the office of endowed care cemeteries for an order to dissolve
26 the surety bond requirement, so long as at least twenty-five thousand dollars
27 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 staffed
32 office in the county in which the cemetery is located shall have prominently
33 displayed on the premises a sign clearly stating the operator's name, address and
34 telephone number. If the operator does not reside in the county in which the
35 cemetery is located, the sign shall also state the name, address and telephone
36 number of a resident of the county who is the authorized agent of the operator or
37 the location of an office of the cemetery which is within ten miles of such
38 cemetery. In jurisdictions where ordinances require signs to meet certain
39 specifications, a weatherproof notice containing the information required by this
40 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] **at least quarterly** on all burial space that has
5 been fully 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, RSMo, for the sale of cemetery services or for grave lots,**
55 **grave spaces, markers, monuments, memorials, tombstones, crypts ,**
56 **niches or mausoleums, outer burial containers or other receptacle. A**

57 **cemetery operator shall be prohibited from adjusting or establishing**
58 **the sales price of items with the intent of evading the trusting or**
59 **escrow 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 **including interest of ten percent of the**
5 **deficiency** by depositing not less than twenty percent of such deficiency each
6 year for five years [following August 28, 1990,] and shall file, on the form
7 provided by the division, a statement outlining the date and amount such
8 deposits were made. If the cemetery operator fails to correct the deficiency **with**
9 **respect to funds maintained under section 214.330**, the cemetery operator
10 shall thereafter not represent the cemetery as an endowed care cemetery. Any
11 funds held in the cemetery's endowed care trust shall continue to be used for
12 endowed care for that cemetery. The cemetery operator shall remain subject to
13 the provisions of sections 214.270 to 214.410 for any cemetery or any section of
14 the cemetery for which endowed care payments have been collected, subject to the
15 penalties contained in section 214.410, and civil actions as well as subject to any
16 regulations promulgated by the division. **For purposes of this section, the**
17 **term "deficiency" shall mean a deficiency in the amount required to be**
18 **deposited pursuant to section 214.320, or a deficiency created by**
19 **disbursements in excess of what is permitted under section 214.330 and**
20 **shall not include or be affected by deficiencies or shortages caused by**
21 **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.] **The endowed care trust fund required by sections 214.270 to**
93 **214.410 shall be permanently set aside in trust or in accordance with**
94 **the provisions of subsection 2 of this section. The trustee of the**
95 **endowed care trust shall be a state or federally chartered financial**
96 **institution authorized to exercise trust powers in Missouri. The trust**
97 **officer or duly appointed representative of the trustee with knowledge**
98 **and immediate access to the trust fund accounting and trust fund**
99 **records must be made available to the office or its duly authorized**
100 **representative upon request.**

101 **(1) The trust fund records, including all trust fund accounting**
102 **records, shall be maintained in the state of Missouri at all times or**
103 **shall be electronically stored so that the records may be immediately**
104 **accessed and produced in the state of Missouri within five business**
105 **days of request, or as otherwise requested by the office or its duly**
106 **authorized representative. The operator of an endowed care cemetery**
107 **shall maintain a current name and address of the trustee and the**
108 **records custodian for the endowed care trust fund with the office and**
109 **shall provide written notification to the office within five days of any**
110 **change in the name or address of the trustee or custodian of**
111 **records. Notwithstanding any other provision of law, the identity of**
112 **the trustee designated by an endowed care cemetery shall be deemed**
113 **an open record;**

114 **(2) Missouri law shall control all endowed care trust funds and**
115 **the principal place of administration shall at all times be in the state**
116 **of Missouri, and shall be deemed to be there regardless of where**
117 **records may be kept or various administrative tasks may be performed,**
118 **and shall not be changed to any other jurisdiction.**

119 **2. An endowed care trust fund shall be administered as a**
120 **charitable trust in which no specified charitable organization has a**
121 **beneficial interest and a trust in which the attorney general of this**

122 state is treated as the only qualified beneficiary under the provisions
123 of subsection 2 of section 456.110, RSMo, in accordance with Missouri
124 law governing trusts, including but not limited to the applicable
125 provisions of chapters 456 and 469, RSMo; except as specifically
126 provided in this subsection or where the provisions of sections 214.270
127 to 214.410 provide differently. An endowed care fund shall also be
128 operated in accordance with chapters 456 and 469, RSMo, provided that
129 a cemetery operator shall not in any circumstances be authorized to
130 restrict, enlarge, change or modify the requirements of this section or
131 the provisions of chapters 456 and 469, RSMo, by agreement or
132 otherwise.

133 (1) Income and principal of an endowed care trust fund shall be
134 determined under the provisions of law applicable to trusts, except that
135 the provisions of section 469.405, RSMo, shall not apply;

136 (2) No principal shall be distributed from an endowed care trust
137 fund except to the extent that a unitrust election is in effect with
138 respect to such trust under the provisions of section 469.411, RSMo;

139 (3) No right to transfer jurisdiction from Missouri under section
140 456.1-108, RSMo, shall exist for endowed care trusts;

141 (4) All endowed care trusts shall be irrevocable;

142 (5) No trustee shall have the power to terminate an endowed
143 care trust fund under the provisions of section 456.414, RSMo;

144 (6) A unitrust election made in accordance with the provisions
145 of chapter 469, RSMo, shall be made by the cemetery operator in the
146 terms of the endowed care trust fund agreement itself, not by the
147 trustee;

148 (7) No contract of insurance shall be deemed a suitable
149 investment for an endowed care trust fund;

150 (8) The income from the endowed care fund may be distributed
151 to the cemetery operator at least annually on a date designated by the
152 cemetery operator, but no later than six months following the trust
153 fund year. Any income not distributed within six months following the
154 end of the trust's fiscal year shall be added to and held as part of the
155 principal of the trust fund.

156 3. The cemetery operator shall have the duty and responsibility
157 to apply the income distributed to provide care and maintenance only
158 for that part of the cemetery in which burial space shall have been sold

159 and with respect to which sales the endowed care trust fund shall have
160 been established and not for any other purpose.

161 4. In addition to any other duty, obligation or requirement
162 imposed by sections 214.270 to 214.410 or the endowed care trust
163 agreement, the trustee's duties shall be the maintenance of records and
164 the accounting for and investments of moneys deposited by the
165 operator to the endowed care trust fund.

166 (1) For the purposes of sections 214.270 to 214.410, the trustee
167 shall not be deemed responsible for the care, the maintenance, or the
168 operation of the cemetery, or for any other matter relating to the
169 cemetery, or the proper expenditure of funds distributed by the trustee
170 to the cemetery operator, including, but not limited to, compliance with
171 environmental laws and regulations.

172 (2) With respect to cemetery property maintained by cemetery
173 care funds, the cemetery operator shall be responsible for the
174 performance of the care and maintenance of the cemetery property.

175 5. If the endowed care cemetery fund is not permanently set
176 aside in a trust fund as required by subsection 1 of this section then the
177 funds shall be permanently set aside in an escrow account in the state
178 of Missouri. Funds in an escrow account shall be placed in an endowed
179 care trust fund under subsection 1 if the funds in the escrow account
180 exceed three hundred fifty thousand dollars, unless otherwise approved
181 by the division for good cause. The account shall be insured by the
182 Federal Deposit Insurance Corporation or comparable deposit
183 insurance and held in a state or federally chartered financial
184 institution authorized to do business in Missouri and located in this
185 state.

186 (1) The interest from the escrow account may be distributed to
187 the cemetery operator at least in annual or semiannual installments,
188 but not later than six months following the calendar year. Any interest
189 not distributed within six months following the end of the calendar
190 year shall be added to and held as part of the principal of the account;

191 (2) The cemetery operator shall have the duty and responsibility
192 to apply the interest to provide care and maintenance only for that part
193 of the cemetery in which burial space shall have been sold and with
194 respect to which sales the escrow account shall have been established
195 and not for any other purpose. The principal of such funds shall be

196 kept intact. The cemetery operator's duties shall be the maintenance
197 of records and the accounting for an investment of moneys deposited
198 by the operator to the escrow account. For purposes of sections 214.270
199 to 214.410, the administrator of the office of endowed care cemeteries
200 shall not be deemed to be responsible for the care, maintenance, or
201 operation of the cemetery. With respect to cemetery property
202 maintained by cemetery care funds, the cemetery operator shall be
203 responsible for the performance of the care and maintenance of the
204 cemetery property owned by the cemetery operator;

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

208 6. The cemetery operator shall be accountable to the owners of
209 burial space in the cemetery for compliance with sections 214.270 to
210 214.410.

211 7. Excluding funds held in an escrow account, all endowed care
212 trust funds shall be administered in accordance with an endowed care
213 trust fund agreement, which shall be submitted to the office by the
214 cemetery operator for review and approval. The endowed care
215 cemetery shall be notified in writing by the office of endowed care
216 cemeteries regarding the approval or disapproval of the endowed care
217 trust fund agreement and regarding any changes required to be made
218 for compliance with sections 214.270 to 214.410 and the rules and
219 regulations promulgated thereunder.

220 8. All endowed care cemeteries shall be under a continuing duty
221 to file with the office of endowed care cemeteries and to submit for
222 prior approval any and all changes, amendments, or revisions of the
223 endowed care trust fund agreement, thirty days before the effective
224 date of such change, amendment or revision.

225 9. If the endowed care trust fund agreement, or any changes,
226 amendments or revisions filed with the office, are not disapproved by
227 the office within thirty days after submission by the cemetery operator,
228 the endowed care trust fund agreement, or the related change,
229 amendment or revision, shall be deemed effective and may be used by
230 the cemetery operator and the trustee. Notwithstanding any other
231 provision of this section, the office may review and disapprove an
232 endowed care trust fund agreement, or any submitted change,

233 amendment or revision, after the thirty days provided herein or at any
234 other time if the agreement is not in compliance with sections 214.270
235 to 214.410 or the rules promulgated thereunder. The division may
236 waive the thirty day filing requirement upon request by the cemetery
237 operator and a showing of good cause.

238 10. Funds in an endowed care trust fund or escrow account may
239 only be commingled with endowed care funds for other endowed care
240 cemeteries, provided that the cemetery operator and the trustee shall
241 maintain adequate accounting records of the disbursements,
242 contributions and income allocated for each cemetery.

243 11. By accepting the trusteeship of an endowed care trust or
244 accepting funds as an escrow agent pursuant to sections 214.270 to
245 214.410, the trustee or escrow agent submits personally to the
246 jurisdiction of the courts of this state and the office of endowed care
247 cemeteries regarding the administration of the trust or escrow account.
248 A trustee or escrow agent shall consent in writing to the jurisdiction of
249 the state of Missouri and the office in regards to the trusteeship or the
250 operation of the escrow account and to the appointment of the office of
251 secretary of state as its agent for service of process regarding any
252 administration or legal actions relating to the trust or the escrow
253 account, if it has no designated agent for service of process located in
254 this state. Such consent shall be filed with the office prior to accepting
255 funds pursuant to sections 214.270 to 214.410 as trustee or as an escrow
256 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 including interest of ten percent of the deficiency by**
16 **depositing not less than twenty percent of such deficiency each year for**
17 **five years and shall file, on the form provided by the division, a**
18 **statement outlining the date and amount such deposits were made. If**
19 **the cemetery operator fails to correct the deficiency with respect to**
20 **funds maintained under section 214.330, the cemetery operator shall**
21 **thereafter not represent the cemetery as an endowed care**
22 **cemetery. Any funds held in the cemetery's endowed care trust shall**
23 **continue to be used for endowed care for that cemetery. The cemetery**
24 **operator shall remain subject to the provisions of sections 214.270 to**
25 **214.410 for any cemetery or any section of the cemetery for which**
26 **endowed care payments have been collected, subject to the penalties**
27 **contained in section 214.410, and civil actions as well as subject to any**
28 **regulations promulgated by the division. For purposes of this section,**
29 **the term deficiency shall mean a deficiency in the amount required to**
30 **be deposited pursuant to section 214.320, or a deficiency created by**
31 **disbursements in excess of what is permitted under section 214.330 and**
32 **shall not include or be affected by deficiencies or shortages caused by**
33 **the fluctuating value of proper 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**
32 account pursuant to [subsection 1 of section 214.385] **section 214.287** shall file
33 with the report required under subsection 1 of this section [a segregated] **an**
34 **escrow** account report that shall provide the following information:

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

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

40 (3)] The amount on deposit in the [segregated] **escrow** account
41 established pursuant to section [214.385] **214.287**, and the account number.

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 ceasing to do business as a cemetery, selling,
2 or otherwise disposing of a majority of the business assets of a
3 cemetery, or a majority of its stock or other ownership interest if a
4 corporation or other organized business entity, the cemetery operator
5 shall provide written notification to the division of its intent at least
6 thirty days prior to the date set for the transfer, or the closing of the
7 sale, or the date set for termination of its business. Upon receipt of the
8 written notification, the division may take reasonable and necessary
9 action to determine that the cemetery operator has made proper plans
10 to assure that trust funds or funds held in an escrow account for or on
11 behalf of the cemetery will be set aside and used as provided in
12 sections 214.270 to 214.410, including, but not limited to, an audit or
13 examination of books and records. The division may waive the
14 requirements of this subsection or may shorten the period of
15 notification for good cause or if the division determines in its
16 discretion that compliance with its provisions are not necessary.**

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

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

28 **4. The seller of a cemetery shall place fifteen percent of the**
29 **consideration paid or remitted for the purchase or transfer of a**
30 **cemetery in escrow with a bank, trust company or other escrow agent**
31 **approved by the division. Such funds shall be held in escrow for no**
32 **less than six months or such greater time as may be agreed to by the**
33 **seller and the purchaser or transferee. If the purchaser, transferee or**
34 **division determines that the trust fund or any escrow account of the**
35 **former cemetery operator is deficient, the purchaser, transferee or**
36 **division may demand payment from the escrow agent in the amount of**
37 **the deficiency.**

38 **(1) Prior to the disbursement of funds held in escrow, the person**
39 **requesting payment from escrow shall notify the seller in writing of the**
40 **intent to demand a distribution thirty days prior to the requested**
41 **distribution date. The notification shall include the amount of the**
42 **distribution requested and shall be certified under oath. Within thirty**
43 **days after receipt of the notification, the seller may petition a court of**
44 **competent jurisdiction for judicial review to determine whether**
45 **payment from escrow is authorized and such petition shall be served**
46 **upon the escrow agent, provided, however, that if the contract between**
47 **the seller and the purchaser contains an arbitration clause, the seller**
48 **may invoke that remedy in accordance with its terms. The escrow**
49 **agent shall remit payment to the trust fund or to the escrow account**
50 **within forty-five days after receipt of a demand or, if a petition for**
51 **arbitration or judicial review has been filed, as directed by a court or**
52 **the arbitrator's award;**

53 **(2) The escrow agent shall refund the amount held in escrow to**

54 **the seller if a demand is not received for such funds within six months**
55 **after completion of the purchase or transfer.**

214.385. 1. If the operator of any cemetery or another authorized person
2 moves a grave marker, memorial or monument in the cemetery for any reason,
3 the operator or other authorized person shall replace the grave marker, memorial
4 or monument to its original position within a reasonable time.

5 2. When the purchase price of [a monument, marker or memorial] **an**
6 **item of burial merchandise** sold by a cemetery operator or its agent is paid
7 in full, the cemetery operator shall make delivery of such property within a
8 reasonable time. A cemetery operator may comply with this section by delivering
9 to the purchaser of such property a valid warehouse receipt which may be
10 presented to the cemetery operator at a later date for actual delivery.

214.387. 1. [Upon written instructions from the purchaser of a
2 monument, marker or memorial, a cemetery may defer delivery of such property
3 to a date designated by the purchaser, provided the cemetery operator, within
4 forty-five days of the date the property is paid in full, deposits from its own funds
5 an amount equal to one hundred ten percent of such property's wholesale cost
6 into a segregated account. Funds deposited in a segregated account pursuant to
7 this section and section 214.385 shall be maintained in such account until
8 delivery of the property is made or the contract for the purchase of such property
9 is canceled. No withdrawals may be made from the cemetery operator's
10 segregated account established pursuant to this section and section 214.385
11 except as provided herein. The cemetery operator shall not commingle any other
12 of its funds with the deposits made to the segregated account. Money in this
13 account shall be invested utilizing the "prudent man theory" and is subject to
14 audit by the division. Names and addresses of depositories of such money shall
15 be submitted with the annual report.

16 2. If at the end of a calendar year the market value of the cemetery
17 operator's segregated account exceeds the then current wholesale cost of all
18 paid-in-full property which has not been delivered, the cemetery operator may
19 withdraw from the segregated account all realized income earned by such account.
20 If at the end of a calendar year the market value of the cemetery operator's
21 segregated account is less than the then current wholesale cost of all paid-in-full
22 property which has not been delivered, the cemetery operator shall only withdraw
23 the realized income in excess of (i) the segregated account's market value at year
24 end, plus (ii) all realized income accrued to the segregated account minus (iii) the

25 wholesale cost of all paid-in-full property which has not been delivered.

26 3. Upon the delivery of a monument, marker or memorial sold by the
27 cemetery or its agent, or the cancellation of the contract for the purchase of such
28 property, the cemetery operator may withdraw from the segregated account an
29 amount equal to (i) the market value of the segregated account based on the most
30 recent account statement issued to the cemetery operator, times (ii) the ratio the
31 delivered property's deposit in the account bears to the aggregate deposit of all
32 property which is paid in full but not delivered. The segregated account may be
33 inspected or audited by the division.

34 4. Upon written instructions from the purchaser of an interment,
35 entombment, or inurnment cemetery service, a cemetery may defer performance
36 of such service to a date designated by the purchaser, provided the cemetery
37 operator, within forty-five days of the date the agreement is paid in full, deposits
38 from its own funds an amount equal to forty percent of the published retail price
39 into a trustee account. Funds deposited in a trustee account pursuant to this
40 section and section 214.385 shall be maintained in such account until delivery of
41 the service is made or the agreement for the purchase of the service is canceled.
42 No withdrawals may be made from the trustee account established pursuant to
43 this section and section 214.385 except as provided herein. Money in this account
44 shall be invested utilizing the "prudent man theory" and is subject to audit by the
45 division. Names and addresses of depositories of such money shall be submitted
46 with the annual report.

47 5. Upon the delivery of the internment, entombment, or inurnment
48 cemetery service agreed upon by the cemetery or its agent, or the cancellation of
49 the agreement for the purchase of such service, the cemetery operator may
50 withdraw from the trustee account an amount equal to (i) the market value of
51 the trustee account based on the most recent account statement issued to the
52 cemetery operator, times (ii) the ratio the service's deposit in the account bears
53 to the aggregate deposit of all services which are paid in full but not
54 delivered. The trustee account may be inspected or audited by the division.

55 6. The provisions of this section shall apply to all agreements entered into
56 after August 28, 2002.] **With the exception of sales made pursuant to**
57 **section 214.385, all sales by cemetery operators of prearranged burial**
58 **merchandise and services shall be made pursuant to this section.**

59 2. Upon written instructions from the purchaser of burial
60 merchandise or burial services set forth in a cemetery prearranged

61 contract, a cemetery may defer delivery of such burial merchandise or
62 a warehouse receipt for the same under section 214.385, or performance
63 of services, to a date designated by the purchaser, provided the
64 cemetery operator, after deducting sales and administrative costs not
65 to exceed twenty percent of the purchase price, deposits the remaining
66 portion of the purchase price into an escrow or trust account as herein
67 provided, within sixty days following receipt of payment from the
68 purchaser. Funds so deposited pursuant to this section shall be
69 maintained in such account until delivery of the property or the
70 performance of services is made or the contract for the purchase of
71 such property or services is cancelled. The account is subject to
72 inspection, examination or audit by the division. No withdrawals may
73 be made from the escrow or trust account established pursuant to this
74 section except as herein provided.

75 3. Each escrow arrangement must comply with the following:

76 (1) The escrow agent shall be located in Missouri, authorized to
77 exercise escrow powers, and shall maintain the escrow records so that
78 they may be accessed and produced for inspection within five business
79 days of the agent's receipt of a written request made by the office or its
80 duly authorized representative. A cemetery operator shall not serve as
81 an escrow agent for the cemetery operator's account nor shall the
82 escrow agent be employed by or under common ownership with and
83 independent of the cemetery operator. The cemetery operator shall
84 maintain a current name and address for the escrow agent with the
85 office, and shall obtain written approval from the office before making
86 any change in the name or address of the escrow
87 agent. Notwithstanding any other provision of law, information
88 regarding the escrow agent shall be deemed an open record;

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

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

96 (4) The operator shall establish a separate depository account for
97 each cemetery prearranged contract administered pursuant to this

98 subsection;

99 (5) The division may promulgate by rule a form escrow
100 agreement to be used by a cemetery operator operating pursuant to
101 this section.

102 4. Each trust must comply with the following:

103 (1) The trustee shall be a state or federally chartered financial
104 institution authorized to exercise trust powers in Missouri, provided
105 that a foreign financial institution must be approved by the office;

106 (2) The trust fund records, including all trust fund accounting
107 records, shall either be maintained in the state of Missouri or shall be
108 electronically stored so that the records may be immediately accessed
109 and produced in the state of Missouri within five business days of the
110 trustee's receipt of a written request made by the office or its duly
111 authorized representative. The cemetery operator shall maintain a
112 current name and address of the trustee and the records custodian with
113 the office and shall provide written notification to the office within five
114 days of any change in the name or address of the trustee or custodian
115 of record. Notwithstanding any other provision of law, information
116 regarding the trustee shall be deemed an open record. If the business
117 address of the trust officer is not located within the state of Missouri,
118 the trustee shall appoint a representative with knowledge of the trust
119 records, and who can provide immediate access to such records to the
120 office and its authorized representative at the cemetery or a Missouri
121 location acceptable to the office;

122 (3) The principal of such funds shall be kept intact and
123 appropriately invested pursuant to the prudent investor rule under
124 chapter 469, RSMo, provided that no trust funds shall be invested in
125 any term insurance product;

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

131 (5) All expenses of administering a trust, including, without
132 limitation, trustee's fees, expenses in establishing the trust, legal and
133 accounting fees, investment expenses, taxes, and other necessary and
134 reasonable expenses shall be paid from trust income, and shall not be

135 paid from trust principal;

136 (6) Trust instruments shall be subject to the same filing and
137 approval procedure as that set forth for endowed care trust fund
138 agreements under section 214.330;

139 (7) A trustee may commingle the funds from trusts of unrelated
140 cemetery operators for investment purposes when the trustee has
141 demonstrated to the satisfaction of the office adequate accounting for
142 the allocations, disbursements, payments, and income among the
143 participating trusts.

144 5. The income from escrow accounts, after payment of expenses
145 associated with the arrangement, shall be distributed to the cemetery
146 operator. All other distributions from trusts and escrow accounts shall
147 be made pursuant to forms approved by the office. For performance of
148 a cemetery prearranged contract, a certificate of performance form
149 signed by the cemetery operator will be required for distribution. For
150 cancellation of a cemetery prearranged contract, a certificate of
151 cancellation form signed by the cemetery operator and the purchaser
152 will be required for distribution.

153 6. A cemetery prearranged contract is subject to cancellation as
154 follows:

155 (1) At any time before the final disposition of the deceased, or
156 before the services or merchandise described in this section are
157 provided, the purchaser may cancel the contract without cause by
158 delivering written notice thereof to the operator. Within fifteen days
159 after its receipt of such notice, the cemetery operator shall pay to the
160 purchaser a net amount equal to all payments made into the escrow
161 account or trust under the contract. Upon delivery of the purchaser's
162 receipt for such payment to the escrow agent or trustee, the escrow
163 agent or trustee shall distribute to the cemetery operator from the
164 escrow account or trust an amount equal to all deposits made into the
165 escrow account or trust for the contract;

166 (2) Notwithstanding the provisions of subdivision (1) of this
167 subsection, if a purchaser is eligible, becomes eligible, or desires to
168 become eligible, to receive public assistance under chapter 208, RSMo,
169 or any other applicable state or federal law, the purchaser may
170 irrevocably waive and renounce his right to cancel the contract
171 pursuant to the provisions of subdivision (1) of this section, which

172 waiver and renunciation shall be made in writing and delivered to the
173 cemetery operator;

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

179 (4) Notwithstanding the provisions of subdivision (1) of this
180 subsection, once any purchase order is entered for the production or
181 manufacture of burial merchandise, per the purchasers written request,
182 the purchaser's obligation to pay for said burial merchandise shall be
183 noncancellable;

184 (5) No funds subject to a purchaser's right of cancellation
185 hereunder shall be subject to the claims of the cemetery operator's
186 creditors.

187 7. This section shall apply to all agreements entered into after
188 August 28, 2009.

214.389. 1. The division may direct a trustee, financial
2 institution, or escrow agent to suspend distribution from an endowed
3 care trust fund or escrow account if the cemetery operator does not
4 have a current and active cemetery operator license, has failed to file
5 an annual report, has failed to respond to an inquiry from the division,
6 its auditor or other designated agent or if, after an audit or
7 examination, the division determines there is a deficiency in an
8 endowed care trust fund and the cemetery operator has failed to file a
9 corrective action plan detailing how the deficiency shall be
10 remedied. For purposes of this section, a deficiency shall only be
11 deemed to exist if, after an audit or examination, the division
12 determines a cemetery operator has failed to deposit the total
13 aggregate of funds required to be deposited in trust or an escrow
14 account pursuant to section 214.320, or has received disbursements
15 from the trust or escrow account in excess of what is permitted under
16 section 214.330. No deficiency shall be deemed to be created by
17 fluctuations in the value of investments held in trust or escrow.

18 2. The division shall provide written notification to the cemetery
19 operator and the trustee, financial institution, or escrow agent no less
20 than fourteen days prior to suspending distributions pursuant to this

21 section. The amount of any distribution suspended shall become
22 principal within six-months after the date such distribution would have
23 otherwise been payable, with credit against the deficiency, unless the
24 cemetery operator files an appeal with a court of competent
25 jurisdiction or with the administrative hearing commission, as
26 provided herein. In the event of an appeal, a cemetery operator may
27 request the court or administrative hearing commission stay the
28 suspension of distribution after a showing of necessity and good cause
29 or authorize payment from the endowed care trust fund or escrow
30 account for necessary expenses from any amount subject to
31 distribution.

32 3. Upon receipt of an order from the decision suspending
33 distribution pursuant to this section, a trustee, financial institution, or
34 escrow agent shall immediately suspend distribution as required by the
35 order. A trustee, financial institution, or escrow agent shall be exempt
36 from liability for failure to distribute funds as ordered by the division.

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

47 5. A cemetery operator may apply for reinstatement of
48 distributions upon demonstration that the deficiencies or other
49 problems have been cured or that the operator has otherwise come into
50 compliance.

51 6. The division may promulgate rules to implement the
52 provisions of this section. Any rule or portion of a rule, as that term is
53 defined in section 536.010, RSMo, that is created under the authority
54 delegated in this section shall become effective only if it complies with
55 and is subject to all of the provisions of chapter 536, RSMo, and, if
56 applicable, section 536.028, RSMo. This section and chapter 536, RSMo,
57 are nonseverable and if any of the powers vested with the general

58 assembly pursuant to chapter 536, RSMo, to review, to delay the
59 effective date, or to disapprove and annul a rule are subsequently held
60 unconstitutional, then the grant of rulemaking authority and any rule
61 proposed or adopted after August 28, 2009, shall 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.

214.455. Every person who shall knowingly **and unlawfully** destroy,
2 mutilate, disfigure, deface, injure, or remove **without authorization** any

3 **human remains from a cemetery or burial ground or other place of**
4 **interment, entombment, or inurnment or who shall knowingly and**
5 **unlawfully destroy, mutilate, disfigure, deface, injure, or remove any**
6 tomb, monument, or gravestone, or other structure placed in such cemetery or
7 burial ground or place of burial of any human being, is guilty of a class A
8 misdemeanor.

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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