

SENATE BILL NO. 1108

103RD GENERAL ASSEMBLY

INTRODUCED BY SENATOR ROBERTS.

4776S.011

KRISTINA MARTIN, Secretary

AN ACT

To repeal sections 214.270 and 214.389, RSMo, and to enact in lieu thereof three new sections relating to cemeteries.

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

Section A. Sections 214.270 and 214.389, RSMo, are
2 repealed and three new sections enacted in lieu thereof, to be
3 known as sections 214.270, 214.272, and 214.389, to read as
4 follows:

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

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

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

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

15 (4) "Cemetery", property restricted in use for the
16 interment of the human dead by formal dedication or

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

17 reservation by deed but shall not include any of the
18 foregoing held or operated by the state or federal
19 government or any political subdivision thereof, any
20 incorporated city or town, any county, or any religious
21 organization, cemetery association, or fraternal society
22 holding the same for sale solely to members and their
23 immediate families;

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

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

34 (7) "Cemetery prearranged contract", any contract with
35 a cemetery or cemetery operator for burial merchandise or
36 burial services covered by sections 214.270 to 214.410
37 **[which] that** is entered into before the death of the
38 individual for whom the burial merchandise or burial
39 services are intended;

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

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

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

51 (11) "Department", department of commerce and
52 insurance;

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

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

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

60 (15) "Endowed care", the maintenance, repair, and care
61 of all burial space subject to the endowment within a
62 cemetery, including any improvements made for the benefit of
63 such burial space. Endowed care shall include the general
64 overhead expenses needed to accomplish such maintenance,
65 repair, care, and improvements. Endowed care shall include
66 the terms perpetual care, permanent care, continual care,
67 eternal care, care of duration, or any like term;

68 (16) "Endowed care cemetery", a cemetery, or a section
69 of a cemetery, [which] **that** represents itself as offering
70 endowed care and [which] **that** complies with the provisions
71 of sections 214.270 to 214.410;

72 (17) "Endowed care fund", "endowed care trust", or
73 "trust", any cash or cash equivalent, to include any income
74 therefrom, impressed with a trust by the terms of any gift,
75 grant, contribution, payment, devise, or bequest to an
76 endowed care cemetery, or its endowed care trust, or funds
77 to be delivered to an endowed care cemetery's trust received
78 pursuant to a contract and accepted by any endowed care
79 cemetery operator or [his] **the operator's** agent. This

80 definition includes the terms endowed care funds,
81 maintenance funds, memorial care funds, perpetual care
82 funds, or any like term;

83 (18) "Escrow account", an account established in lieu
84 of an endowed care fund as provided under section 214.330 or
85 an account used to hold deposits under section 214.387;

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

90 (20) "Escrow agreement", an agreement subject to
91 approval by the office between an escrow agent and a
92 cemetery operator or its agent or related party with common
93 ownership[,] to receive and administer payments under
94 cemetery prearranged contracts sold by the cemetery operator;

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

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

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

108 (24) "Government cemetery", or "municipal cemetery", a
109 cemetery owned, operated, controlled, or managed by the
110 federal government, the state, or a political subdivision of

the state, including a county or municipality or instrumentality thereof;

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

(26) **"Human and pet cemetery", a tract of real estate separate from a cemetery in which both human remains and the remains of creatures other than human may be interred and memorialized at the discretion of the lot holder and subject to the rules of the human and pet cemetery. Burial space in a human and pet cemetery shall have the same meaning as defined in this section but be applicable to pets as well as human dead;**

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

~~[(27)]~~ (28) "Inurnment", placing an urn containing cremated remains in a burial space;

~~[(28)]~~ (29) "Lawn crypt", a burial vault or other permanent container for a casket ~~[which]~~ **that** 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;

~~[(29)]~~ (30) "Mausoleum", a structure or building for the entombment of human remains in crypts;

~~[(30)]~~ (31) "Niche", a space in a columbarium used or intended to be used for inurnment of cremated remains;

~~[(31)]~~ (32) "Nonendowed care cemetery", or "nonendowed cemetery", a cemetery or a section of a cemetery for which no endowed care trust fund has been established in accordance with sections 214.270 to 214.410;

~~[(32)]~~ (33) "Office", the office of endowed care cemeteries within the division of professional registration;

143 [(33)] (34) "Owner of burial space", a person to whom
144 the cemetery operator or [his] **the operator's** authorized
145 agent has transferred the right of use of burial space;

146 [(34)] (35) "Person", an individual, corporation,
147 partnership, joint venture, association, trust, or any other
148 legal entity;

149 [(35)] (36) "Registry", the list of cemeteries
150 maintained in the division office for public review. The
151 division may charge a fee for copies of the registry;

152 [(36)] (37) "Religious cemetery", a cemetery owned,
153 operated, controlled, or managed by any church, convention
154 of churches, religious order, or affiliated auxiliary
155 thereof in which the sale of burial space is restricted
156 solely to its members and their immediate families;

157 [(37)] (38) "Surface lawn crypt", a sealed burial
158 chamber whose lid protrudes above the land surface;

159 [(38)] (39) "Total acreage", the entire tract [which]
160 **that** is dedicated to or reserved for cemetery purposes;

161 [(39)] (40) "Trustee of an endowed care fund", the
162 separate legal entity qualified under section 214.330
163 appointed as trustee of an endowed care fund.

214.272. A human and pet cemetery shall be treated as
2 **a cemetery under sections 214.270 to 214.410 for purposes of**
3 **licensing and endowed care.**

 214.389. 1. The division may direct a trustee,
2 financial institution, or escrow agent to suspend
3 distribution from an endowed care trust fund or escrow
4 account if the cemetery operator does not have a current and
5 active cemetery operator license, has failed to file an
6 annual report, or if, after an audit or examination, the
7 division determines there is a deficiency in an endowed care
8 trust fund or escrow account maintained under section

214.330 and the cemetery operator has failed to file a corrective action plan detailing how the deficiency shall be remedied. For purposes of this section, a deficiency shall only be deemed to exist if, after an audit or examination, the division determines a cemetery operator has failed to deposit the total aggregate of funds required to be deposited in trust or an escrow account pursuant to section 214.320 or subsection 1 of section 214.335, or has received disbursements from the trust or escrow account in excess of what is permitted under section 214.330. No deficiency shall be deemed to be created by fluctuations in the value of investments held in trust or escrow.

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

41 hearing commission stay the suspension of distribution after
42 a showing of necessity and good cause or authorize payment
43 from the endowed care trust fund or escrow account for
44 necessary expenses from any amount subject to distribution.

45 3. Upon receipt of an order from the division
46 suspending distribution pursuant to this section, a trustee,
47 financial institution, or escrow agent shall immediately
48 suspend distribution as required by the order. A trustee,
49 financial institution, or escrow agent shall be exempt from
50 liability for failure to distribute funds as ordered by the
51 division.

52 4. A cemetery operator may appeal an order suspending
53 distribution pursuant to this section to the administrative
54 hearing commission. The administrative hearing commission
55 shall receive notice of such appeal within thirty days from
56 the date the notice of suspension was mailed by certified
57 mail. Failure of a person whose license was suspended to
58 notify the administrative hearing commission of his or her
59 intent to appeal waives all rights to appeal the
60 suspension. Upon notice of such person's intent to appeal,
61 a hearing shall be held before the administrative hearing
62 commission pursuant to chapter 621.

63 5. A cemetery operator may apply for reinstatement of
64 distributions upon demonstration that the deficiencies or
65 other problems have been cured or that the operator has
66 otherwise come into compliance.

67 6. The division may promulgate rules to implement the
68 provisions of this section. Any rule or portion of a rule,
69 as that term is defined in section 536.010, that is created
70 under the authority delegated in this section shall become
71 effective only if it complies with and is subject to all of
72 the provisions of chapter 536 and, if applicable, section

73 536.028. This section and chapter 536 are nonseverable and
74 if any of the powers vested with the general assembly
75 pursuant to chapter 536 to review, to delay the effective
76 date, or to disapprove and annul a rule are subsequently
77 held unconstitutional, then the grant of rulemaking
78 authority and any rule proposed or adopted after August 28,
79 2010, shall be invalid and void.

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