

Missouri Revised Statutes

Chapter 214 Cemeteries

August 28, 2006

214.265 Any person, entity, association, city, town, village, county or political subdivision that purchases, receives or holds any real estate used for the burial of dead human bodies, excluding a family cemetery, shall notify the Office of the Endowed Care Cemeteries of the name, location and address of such real estate on a form approved by the Office, before October 1, 2007, or within thirty days of purchasing, receiving or holding such land. No fee shall be charged for such notification. This section shall not be deemed to exempt any operator of an endowed care cemetery or non-endowed care cemetery from being duly licensed as required by this Chapter.

Definitions.

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

- (1) "Agent" or "authorized agent", any person empowered by the cemetery operator to represent the operator in dealing with the general public, including owners of the burial space in the cemetery;
- (2) "Burial space", one or more than one plot, grave, mausoleum, crypt, lawn, surface lawn crypt, niche or space used or intended for the interment of the human dead;
- (3) "Cemetery", property restricted in use for the interment of the human dead by formal dedication or reservation by deed but shall not include any of the foregoing held or operated by the state or federal government or any political subdivision thereof, any incorporated city or town, any county or ~~sa~~;
- ~~(a) Any~~ religious organization, cemetery association or fraternal society holding the same for sale solely to members and their immediate families;
- (4) "Cemetery association", any number of persons who shall have associated themselves by articles of agreement in writing as a not-for-profit association or organization, whether incorporated or unincorporated, formed for the purpose of ownership, preservation, care, maintenance, adornment and administration of a cemetery. Cemetery associations shall be governed by a board of directors. Directors shall serve without compensation;
- (5) "Cemetery operator" or "operator", any person who owns, controls, operates or manages a cemetery;

- 1 (6) "Cemetery service", those services performed by a cemetery owner or operator licensed
2 pursuant to this chapter as an endowed care cemetery including setting a monument, setting a
3 tent, excavating a grave, or setting a vault;
- 4 (7) "Columbarium", a building or structure for the inurnment of cremated human remains;
- 5 (8) "Community mausoleum", a mausoleum containing a substantial area of enclosed space and
6 having either a heating, ventilating or air conditioning system;
- 7 (9) "Department", department of [economic development insurance, financial institutions and](#)
8 [professional registration](#);
- 9 (10) "Developed acreage", the area which has been platted into grave spaces and has been
10 developed with roads, paths, features, or ornamentations and in which burials can be made;
- 11 (11) "Director", director of the division of professional registration;
- 12 (12) "Division", division of professional registration;
- 13 (13) "Endowed care", the maintenance, repair and care of all burial space subject to the
14 endowment within a cemetery, including any improvements made for the benefit of such burial
15 space. Endowed care shall include the general overhead expenses needed to accomplish such
16 maintenance, repair, care and improvements. Endowed care shall include the terms perpetual
17 care, permanent care, continual care, eternal care, care of duration, or any like term;
- 18 (14) "Endowed care cemetery", a cemetery, or a section of a cemetery, which represents itself as
19 offering endowed care and which complies with the provisions of sections 214.270 to 214.410.
- 20 (15) ~~"Endowed care fund"~~[Endowed care trust fund](#)", "endowed care trust", or "trust", any cash or
21 cash equivalent, to include any income therefrom, impressed with a trust by the terms of any gift,
22 grant, contribution, payment, devise or bequest to an endowed care cemetery, or its endowed
23 care trust, or funds to be delivered to an endowed care cemetery's trust received pursuant to a
24 contract and accepted by any endowed care cemetery operator or his agent. This definition
25 includes the terms ~~endowed care fund~~[endowed care trust funds](#), maintenance funds, memorial
26 care funds, perpetual care funds, or any like term;
- 27 (16) "Family burial ground", a cemetery in which no burial space is sold to the public and in
28 which interments are restricted to persons related by blood or marriage;
- 29 (17) "Fraternal cemetery", a cemetery owned, operated, controlled or managed by any fraternal
30 organization or auxiliary organizations thereof, in which the sale of burial space is restricted
31 solely to its members and their immediate families;
- 32 (18) "Garden mausoleum", a mausoleum without a substantial area of enclosed space and having
33 its crypt and niche fronts open to the atmosphere. Ventilation of the crypts by forced air or
34 otherwise does not constitute a garden mausoleum as a community mausoleum;

(19) "Green cemetery", ????????????

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

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

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

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

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

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

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

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

(27) "Office," the office of endowed care cemeteries within the division of professional registration.

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

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

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

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

1 [(31)] (32) "Surface lawn crypt", a sealed burial chamber whose lid protrudes above the land
2 surface;

3 [(32)] (33) "Total acreage", the entire tract which is dedicated to or reserved for cemetery
4 purposes;

5 [(33)] (34) "Trustee of an ~~endowed care fund~~ endowed care trust fund", the separate legal entity
6 appointed as trustee of an ~~endowed care fund~~ endowed care trust fund.

7 (L. 1961 p. 538 § 2, A.L. 1990 H.B. 1079, A.L. 1994 S.B. 496, A.L. 1996 S.B. 494, A.L. 2002 S.B. 892)
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10 **License, cemeteries--division's powers and duties --limitations.**

11 214.275. 1. No endowed care or nonendowed care cemetery shall be operated in this state unless
12 the owner or operator thereof has a license issued by the division and complies with all
13 applicable state, county or municipal ordinances and regulations.

14 2. It shall not be unlawful for a person who does not have a license to care for or maintain the
15 cemetery premises, or to fulfill prior contractual obligations for the interment of human remains
16 in burial spaces.

17 3. Applications for a license shall be in writing, submitted to the division on forms prescribed by
18 the division. The application shall contain such information as the division deems necessary and
19 be accompanied by the required fee.

20 4. Each license issued pursuant to sections 214.270 to 214.516 shall be renewed prior to the
21 license renewal date established by the division. The division shall issue a new license upon
22 receipt of a proper renewal application, trust fund report as required by section 214.340, and the
23 required renewal fee. The required renewal fee shall be fifty dollars, plus an assessment for each
24 interment, inurnment or other disposition of human remains at a cemetery for which a charge is
25 made, as the division shall by rule determine, not to exceed ten dollars per such disposition in the
26 case of an endowed care cemetery, and six dollars for such disposition in the case of a
27 nonendowed care cemetery. The division shall mail a renewal notice to the last known address of
28 the holder of the license prior to the renewal date. The holder of a license shall keep the division
29 advised of the holder's current address. The license issued to the owner or operator of a cemetery
30 which is not renewed within three months after the license renewal date shall be suspended
31 automatically, subject to the right of the holder to have the suspended license reinstated within
32 nine months of the date of suspension if the person pays the required reinstatement fee. Any
33 license suspended and not reinstated within nine months of the suspension shall expire and be
34 void and the holder of such license shall have no rights or privileges provided to holders of valid
35 licenses. Any person whose license has expired may, upon demonstration of current
36 qualifications and payment of required fees, be reregistered or reauthorized under the person's
37 original license number. The division shall grant or deny each application for a license pursuant
38 to this section within ninety days after it is filed, and no prosecution of any person who has filed
39 an application for such license shall be initiated unless it is shown that such application was
40 denied by the division and the owner was

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2 5. The division shall grant or deny each application for a license pursuant to this section within
3 ninety days after it is filed, and no prosecution of any person who has filed an application for
4 such license shall be initiated unless it is shown that such application was denied by the division
5 and the owner was notified thereof.

6 6. Upon the filing of a completed application, as defined by rule, the applicant may operate the
7 business until the application is acted upon by the division.

8 7. Within thirty days after the sale or transfer of ownership or control of a cemetery, the
9 transferor shall return his or her license to the division. A prospective purchaser or transferee of a
10 cemetery shall file an application for a license at least thirty days prior to the sale or transfer of
11 ownership or control of a cemetery and shall be in compliance with sections 214.270 to 214.516.

12 (L. 1999 H.B. 343, A.L. 2001 H.B. 567)
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15 **Refusal to issue license--notice--hearing.**

16 214.276. 1. The division may refuse to issue or renew any license, required pursuant to sections
17 214.270 to 214.516 for one or any combination of causes stated in subsection 2 of this section.
18 The division shall notify the applicant in writing of the reasons for the refusal and shall advise
19 the applicant of his or her right to file a complaint with the administrative hearing commission as
20 provided by chapter 621, RSMo.

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

25 (1) Use of any controlled substance, as defined in chapter 195, RSMo, or alcoholic beverage to
26 an extent that such use impairs a person's ability to perform the work of any profession licensed
27 or regulated by sections 214.270 to 214.516;

28 (2) The person has been finally adjudicated and found guilty, or entered a plea of guilty or nolo
29 contendere, in a criminal prosecution pursuant to the laws of any state or of the United States, for
30 any offense reasonably related to the qualifications, functions or duties of any profession
31 licensed or regulated pursuant to sections 214.270 to 214.516, for any offense an essential
32 element of which is fraud, dishonesty or an act of violence, or for any offense involving moral
33 turpitude, whether or not sentence is imposed;

34 (3) Use of fraud, deception, misrepresentation or bribery in securing any license, issued pursuant
35 to sections 214.270 to 214.516 or in obtaining permission to take any examination given or
36 required pursuant to sections 214.270 to 214.516;

37 (4) Obtaining or attempting to obtain any fee, charge or other compensation by fraud, deception
38 or misrepresentation;

- 1 (5) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty in the
2 performance of the functions or duties of any profession regulated by sections 214.270 to
3 214.516;
- 4 (6) Violation of, or assisting or enabling any person to violate, any provision of sections 214.270
5 to 214.516, or any lawful rule or regulation adopted pursuant to sections 214.270 to 214.516;
- 6 (7) Impersonation of any person holding a license or allowing any person to use his or her
7 license;
- 8 (8) Disciplinary action against the holder of a license or other right to practice any profession
9 regulated by sections 214.270 to 214.516 granted by another state, territory, federal agency or
10 country upon grounds for which revocation or suspension is authorized in this state;
- 11 (9) A person is finally adjudged insane or incompetent by a court of competent jurisdiction;
- 12 (10) Assisting or enabling any person to practice or offer to practice any profession licensed or
13 regulated by sections 214.270 to 214.516 who is not registered and currently eligible to practice
14 pursuant to sections 214.270 to 214.516;
- 15 (11) Issuance of a license based upon a material mistake of fact;
- 16 (12) Failure to display a valid license;
- 17 (13) Violation of any professional trust or confidence;
- 18 (14) Use of any advertisement or solicitation which is false, misleading or deceptive to the
19 general public or persons to whom the advertisement or solicitation is primarily directed;
- 20 (15) Willfully and through undue influence selling a burial space, cemetery services or
21 merchandise.
- 22 3. After the filing of such complaint, the proceedings shall be conducted in accordance with the
23 provisions of chapter 621, RSMo. Upon a finding by the administrative hearing commission that
24 the grounds, provided in subsection 2 of this section, for disciplinary action are met, the division
25 may singly or in combination, censure or place the person named in the complaint on probation
26 on such terms and conditions as the division deems appropriate for a period not to exceed five
27 years, or may suspend, or revoke the license or permit **or may impose an administrative penalty**
28 **as authorized by pursuant to subsection 4 of section 214.410.** No new license shall be issued to
29 the owner or operator of a cemetery or to any corporation controlled by such owner for three
30 years after the revocation of the certificate of the owner or of a corporation controlled by the
31 owner.
- 32 ~~4. Operators of all existing endowed care or nonendowed care cemeteries shall, prior to August~~
33 ~~twenty-eighth following August 28, 2001, apply for a license pursuant to this section. All~~
34 ~~endowed care or nonendowed care cemeteries operating in compliance with sections 214.270 to~~

1 ~~214.516 prior to August twenty eighth following August 28, 2001, shall be granted a license by~~
2 ~~the division upon receipt of application.~~

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

8 (L. 1999 H.B. 343, A.L. 2001 H.B. 567)
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10 **Injunctions, restraining orders, other court remedies available --venue.**

11 214.277. 1. Upon application by the division, and the necessary burden having been met, a court
12 of general jurisdiction may grant an injunction, restraining order or other order as may be
13 appropriate to enjoin a person from:

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

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

22 2. Any such action shall be commenced either in the county in which such conduct occurred or in
23 the county in which the defendant resides.

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

27 (L. 1999 H.B. 343)
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30 **Election to operate as endowed care cemetery filing with division of registration,**
31 **form--fee--deposit of fee--division's powers and duties--rules authorized.**

32 214.280. 1. Operators of all existing cemeteries shall, prior to August twenty-eighth following
33 August 28, 1994, elect to operate each cemetery as an endowed care cemetery as defined in
34 subdivision (12) of section 214.270 and shall register such intention with the division and remit
35 the required registration fee or, failing such election, shall operate each cemetery for which such
36 election is not made as a nonendowed cemetery without regard to registration fees or penalties.
37 Operators of all cemeteries hereafter established shall, within ninety days from the establishment
38 thereof, elect to operate each cemetery as an "endowed care cemetery", or as a "nonendowed

1 cemetery". Such election for newly established cemeteries shall be filed with the division, on a
2 form provided by the division. Any such election made subsequent to August 28, 1994, shall be
3 accompanied by a filing fee set by the division, and such fee shall be deposited in the endowed
4 care cemetery audit fund as defined in section 193.265, RSMo. The fee authorized in this
5 subsection shall not be required from an existing nonendowed cemetery.

6 2. The division may adopt rules establishing the conditions and procedures governing the
7 circumstances where an endowed care cemetery elects to operate as a nonendowed care
8 cemetery. In the event an endowed care cemetery elects to operate as a nonendowed care
9 cemetery, the division shall make every effort to require such cemetery to meet all contractual
10 obligations for the delivery of services entered into prior to it reverting to the status of a
11 nonendowed cemetery.

12 (L. 1961 p. 538 § 4, A.L. 1994 S.B. 496 § 214.280 subsecs. 1, 2)
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15 **Registry of cemeteries to be kept by division--fee may be charged for copies--**
16 **surveyor locating unregistered cemetery to file with division, form.**

17 214.283. The division shall establish and maintain a registry of cemeteries and the registry shall
18 be available to the public for review at the division office or copied upon request. The division
19 may charge a fee for copies of the register.

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

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

28 (A.L. 1994 S.B. 496 § 214.280 subsec. 3)
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31 **Minimum endowed care and maintenance fund on election.**

32 ~~{214.290. Any cemetery operator who within ninety days from the effective date of sections~~
33 ~~214.270 to 214.410 elects to operate a cemetery which exists on the effective date of sections~~
34 ~~214.270 to 214.410 as an endowed care cemetery or who represents to the public that perpetual,~~
35 ~~permanent, endowed, continual, eternal care, care of duration or similar care will be furnished~~
36 ~~cemetery property sold, shall before selling or disposing of any interment space or lots in said~~
37 ~~cemetery after the date of such election, establish a minimum endowed care and maintenance~~
38 ~~fund in cash in the amount required by section 214.300 unless an endowed care fund is already~~
39 ~~in existence to which regular deposits have been made (whether or not the fund then existing~~
40 ~~shall be in the minimum amount required under section 214.300).}~~ **DO WE STILL NEED**
THIS LANGUAGE?

~~(L. 1961 p. 538 § 6)~~ **Nonendowed cemetery may qualify as endowed, when--minimum care and maintenance fund to be established.**

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

(1) So electing in compliance with section 214.280;

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

(3) Filing the report required by section 214.340.

(L. 1961 p. 538 § 12, A.L. 1994 S.B. 496)

Endowed care and maintenance fund, minimum amount--bond--posting of sign, when, information required.

214.310. 1. Any cemetery operator who elects to operate a new cemetery as an endowed care cemetery or who represents to the public that perpetual, permanent, endowed, continual, eternal care, care of duration or similar care will be furnished cemetery property sold shall create an ~~endowed care fund~~endowed care trust fund and shall deposit a minimum of twenty-five thousand dollars for cemeteries that have in excess of one hundred burials annually or a minimum of five thousand dollars for cemeteries that have one hundred or less burials annually in such fund before selling or disposing of any burial space in said cemetery, or in lieu thereof such cemetery owner may furnish a surety bond issued by a bonding company or insurance company authorized to do business in this state in the face amount of thirty thousand dollars, and such bond shall run to the office of endowed care cemeteries for the benefit of the care funds held by such cemetery. This bond shall be for the purpose of guaranteeing an accumulation of twenty- five thousand dollars in such care fund and also for the further purpose of assuring that the cemetery owner shall provide annual perpetual or endowment care in an amount equal to the annual reasonable return on a secured cash investment of twenty-five thousand dollars until twenty-five thousand dollars is accumulated in said ~~endowed care fund~~endowed care trust funds, and these shall be the conditions of such surety bond; provided, however, the liability of the principal and surety on the bond shall in no event exceed thirty thousand dollars. Provided further, that whenever a cemetery owner which has made an initial deposit to the ~~endowed care fund~~endowed care trust fund demonstrates to the satisfaction of the administrator of the office of endowed care cemeteries that more than twenty-five thousand dollars has been accumulated in the ~~endowed care fund~~endowed care trust fund, the cemetery owner may petition the administrator of the office of endowed care cemeteries for an order to dissolve the surety bond requirement, so long as at least twenty-five thousand dollars always remains in the ~~endowed care fund~~endowed care trust fund.

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

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

(L. 1961 p. 538 § 5, A.L. 1990 H.B. 1079, A.L. 1994 S.B. 496, A.L. 1999 H.B. 343)

Deposits in fund required, amount--annual report, form furnished by division-- audits may be conducted, when--record keeping required.

214.320. 1. An operator of an endowed care cemetery shall establish and deposit in an ~~endowed care fund~~endowed care trust fund, ~~within forty-five thirty days of the sale or disposition of any burial space or within thirty forty-five days of receiving any installment payment for any burial space~~, not less than the following amounts: ~~[for burial space sold or disposed of, with such deposits to the endowed care fund~~endowed care trust fund ~~to be made semiannually on all burial space that has been fully paid for to the date of deposit]~~:

(1) A minimum of fifteen percent of the gross sales price, or twenty dollars, whichever is greater, for each grave space sold **or, when the gross sales price is paid in installments, fifteen percent of each installment until at least fifteen percent of the gross sales price has been deposited;**

(2) A minimum of ten percent of the gross sales price of each crypt or niche sold in a community mausoleum, or a minimum of one hundred dollars for each crypt or ten dollars for each niche sold in a garden mausoleum, **whichever is greater, or, when the gross sales price is paid in installments, ten percent of each installment until at least ten percent of the gross sales price has been deposited;**

(3) A minimum of **ten percent of the gross sales price of each grave space, or a minimum of seventy-five dollars per grave space for each lawn crypt sold, whichever is greater, or, when the gross sales price is paid in installments, ten percent of each installment until at least ten percent of the gross sales price has been deposited;**

2. Notwithstanding the provisions of subdivision (2) of subsection 1 of this section, a cemetery operator who has made the initial deposit in trust as required by sections 214.270 to 214.410 from his own funds, and not from funds deposited with respect to sales of burial space, may deposit only one-half the minimum amounts set forth in subdivisions (1) and (2) of subsection 1

of this section, until he shall have recouped his entire initial deposit. Thereafter, he shall make the minimum deposits required under subdivisions (1), (2) and (3) of subsection 1 of this section.

3. Each operator of an endowed care cemetery shall, **after August 28, 1990,** file with the division of professional registration, on a form provided by the division, an annual endowed care trust fund report. The operator of any cemetery representing the cemetery, or any portion of the cemetery, as an endowed care cemetery shall make available to the division for inspection or audit at any reasonable time only those cemetery records and trust fund records necessary to determine whether the cemetery's ~~endowed care fund~~**endowed care trust fund** is in compliance with sections 214.270 to 214.410. Each cemetery operator who has established a segregated account pursuant to section ~~[214.385]~~ **214.387** shall make available to the division for inspection or audit at any reasonable time those cemetery records and financial institution records necessary to determine whether the cemetery operator is in compliance with the provisions of section 214.385 **and section 214.387.** [All documents, records, and work product from any inspections or audits performed by or at the direction of the division shall remain in the possession of the division of professional registration and shall not be sent to the state board of embalmers and funeral directors.] No charge shall be made for such inspections or audits.

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4. If any endowed care cemetery operator conducts the trust fund accounting and record keeping outside of this state, then such operator shall maintain current and accurate copies of such accounting and record keeping within this state and such copies shall be made readily available to the division for inspection or audit purposes. ***The trustee or a duly appointed representative of the trustee with knowledge of and immediate access to the trust fund accounting and records must be physically present in the state of Missouri.***

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

(L. 1961 p. 538 § 7, A.L. 1990 H.B. 1079, A.L. 1994 S.B. 496 merged with S.B. 701)

(1984) A district court erred in allowing cemetery owners to require third party memorial installers to contribute a percentage of amounts charged for monument installation to endowed care cemetery funds. Rosebrough Monument Co. v. Memorial Park Cemetery (8th Cir.), 736 F.2d 441.

Required deposits--deficiency--effect--penalty.

214.325 If the deposits to any ~~endowed care fund~~**endowed care trust fund** required by sections 214.270 to 214.410 are less than the total sum required to be set aside and deposited since the effective date of such sections, the cemetery operator shall correct such deficiency by depositing not less than twenty percent of such deficiency each year for five years following August 28, 1990, and shall file, on the form provided by the division, a statement outlining the date and amount such deposits were made. If the cemetery operator fails to correct the deficiency, the cemetery operator shall thereafter not represent the cemetery as an endowed care cemetery. Any funds held in the cemetery's endowed care trust shall continue to be used for endowed care for that cemetery. The cemetery operator shall remain subject to the provisions of sections 214.270 to 214.410 for any cemetery or any section of the cemetery for which endowed care payments have been collected, subject to the penalties contained in section 214.410, and civil actions as well as subject to any regulations promulgated by the division.

Endowed care fund held in trust or segregated account--requirements--duties of trustee or independent investment advisor--operator's duties--endowed care fund agreement.

214.330.1. The ~~endowed care fund~~endowed care trust fund required by sections 214.270 to 214.410 shall be permanently set aside in trust or in accordance with the provisions of subsection 2 of this section. The trustee of the endowed care trust shall be a state- or federally chartered financial institution authorized to exercise trust powers in Missouri and located in this state. *The trust officer or a duly appointed representative of the trust office with knowledge of and immediate access to the trust fund accounting and records must be physically present in this state.*

(a) *The trust fund records, including all trust fund accounting records, shall be maintained in the state of Missouri at all times or shall be electronically stored so that the records may be immediately accessed and produced in the state of Missouri, upon request by the Office or its duly authorized representative. The operator of an endowed care cemetery shall maintain a current name and address of the records custodian for the ~~endowed care fund~~endowed care trust fund with the Office and shall provide written notification to the Office within five days (5) days of any change in the name or address of the custodian of record.*

(b) The income from the ~~endowed care fund~~endowed care trust fund [shall] may be distributed to the cemetery operator [at least] annually on a date designated by the cemetery operator [or in other convenient installments].

1. The cemetery operator shall have the duty and responsibility to apply the income ***distributed*** to provide care and maintenance only for that part of the cemetery in which burial space shall have been sold and with respect to which sales the ~~endowed care fund~~endowed care trust fund shall have been established and not for any other purpose.

2. The principal of such funds shall be kept intact and appropriately invested by the trustee, or the independent investment advisor, *For the purposes of this chapter, realized and unrealized capital gains shall be considered as principal, not income.*

3. *If the cemetery operator declines a distribution of income or if the trustee fails to make an income distribution within six-months of the close of the ~~endowed care fund~~endowed care trust fund fiscal year, the trustee shall maintain adequate records identifying the amount of income distribution declined or not distributed and the date any such distribution was declined. The amount of income declined by the cemetery owner or not distributed by the trustee shall be permanently and automatically deemed as principal and shall be maintained and invested in accordance with the rules governing principal amounts in an ~~endowed care fund~~endowed care trust fund.*

(A) In cases of documented natural disasters, undistributed income may, with the prior written approval of the office, be taken out of the principal.

(c) *An endowed care trust fund shall be administered as a charitable trust in which no specified charitable organization has a beneficial interest in accordance with Missouri law governing trusts, including but not limited to the applicable provisions of Chapter 456, 475*

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1 and 469 R.S.Mo.; except as specifically provided in this subsection or where the provisions of
2 sections 214.270 to 214.410 provide differently.

3 1. Income and principal of an endowed care trust fund shall be determined under the
4 provisions of law applicable to trusts, except that the provisions of Section 469.405
5 R.S.Mo. shall not apply. (1) For the purposes of this chapter, realized and unrealized
6 capital gains shall be considered as principal, and, not income except as otherwise
7 provided in this section or Chapter 469, R.S.Mo.

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8 2. No principal shall be distributed from an endowed care trust fund except to the
9 extent that a unitrust election is in effect with respect to such trust under the
10 provisions of 469.411 R.S.Mo.

11 3. Missouri law shall control all endowed care trust funds and the principal place of
12 administration shall at all times be in the state of Missouri and shall not be changed to
13 any other jurisdiction.

14 4. All endowed care trust funds shall be irrevocable.

15 5. No Trustee shall have the power to terminate an endowed care trust fund under the
16 provisions of Section 456.414

17 (d) ~~An endowed care trust agreement may provide that when the principal in an endowed~~
18 ~~care trust exceeds two hundred fifty thousand dollars, investment decisions regarding the~~
19 ~~principal and undistributed income may be made by a federally registered or Missouri registered~~
20 ~~independent qualified investment advisor designated by the cemetery owner, relieving the trustee~~
21 ~~of all liability regarding investment decisions made by such qualified investment advisor. The~~
22 ~~investment advisor shall be a trustee with respect to the investments in such endowed care~~
23 ~~trust. It shall be the duty of the trustee, or the investment advisor, in the investment of such funds~~
24 ~~to exercise the diligence and care men of ordinary prudence, intelligence and discretion would~~
25 ~~employ, but with a view to permanency of investment considering probable safety of capital~~
26 ~~investment, income produced and appreciation of capital investment. The trustee's duties shall be~~
27 ~~the maintenance of records and the accounting for and investment of moneys deposited by the~~
28 ~~operator to the endowed care fund~~endowed care trust fund.

29 (e) For the purposes of sections 214.270 to 214.410, the trustee ~~or investment advisor~~
30 shall not be deemed to be responsible for the care, the maintenance, or the operation of the
31 cemetery, or for any other matter relating to the cemetery, including, but not limited to,
32 compliance with environmental laws and regulations. With respect to cemetery property
33 maintained by cemetery care funds, the cemetery operator shall be responsible for the
34 performance of the care and maintenance of the cemetery property owned by the cemetery
35 operator and for the opening and closing of all graves, crypts, or niches for human remains in
36 any cemetery property owned by the cemetery operator.

37 2. If the endowed care cemetery fund is not permanently set aside in a trust fund as required by
38 subsection 1 of this section then the funds shall be permanently set aside in a segregated bank
39 account in the state of Missouri which requires the signature of the cemetery owner and a
40 Missouri licensed practicing attorney [either the administrator of the office of endowed care
41 cemeteries, or the signature of] a Missouri licensed practicing attorney [with escrow powers in
42 this state] bank trust officer as joint signatories for any distribution from the trust fund. All
43 funds placed in a segregated account pursuant to this section shall be placed Funds in a

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1 | ~~segregated accounts shall be placed in an endowed care fund~~ **endowed care trust fund** ~~if the~~
2 | ~~funds in the segregated account exceeds one-hundred and fifty thousand dollars.~~ No funds
3 | shall be expended without the signature of ~~a Missouri licensed practicing attorney.~~ **either the**
4 | **administrator of the office of endowed care cemeteries, or** ~~a~~ **licensed practicing attorney with**
5 | **escrow powers in this state.** ~~Missouri bank trust officer.~~ The account shall be insured by the
6 | Federal Deposit Insurance Corporation or comparable deposit insurance and held in a state- or
7 | federally chartered financial institution authorized to do business in Missouri and located in this
8 | state.

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9 | (a) The income from the ~~[endowed care fund]~~ **segregated bank account** [shall] ~~may~~ be
10 | distributed to the cemetery operator at least in annual or semiannual installments. ~~If the cemetery~~
11 | ~~operator declines a distribution of income or if the trustee fails to make an income distribution~~
12 | ~~within six-months of the close of the fiscal year of the segregated account, the trustee shall~~
13 | ~~maintain adequate records identifying the amount of income distribution declined or not~~
14 | ~~distributed and the date any such distribution was declined. The amount of income declined~~
15 | ~~by the cemetery owner or not distributed by the trustee shall be permanently and automatically~~
16 | ~~deemed as principal and shall be maintained and invested in accordance with the rules~~
17 | ~~governing principal amounts in a segregated account.~~

18 | **(1) In cases of documented natural disasters, undistributed income may, with**
19 | **the prior written approval of the office, be taken out of the principal.**

20 |

21 | (b) The cemetery operator shall have the duty and responsibility to apply the income to
22 | provide care and maintenance only for that part of the cemetery in which burial space shall have
23 | been sold and with respect to which sales the ~~endowed care fund~~ **endowed care trust fund** shall
24 | have been established and not for any other purpose. The principal of such funds shall be kept
25 | intact and appropriately invested by the cemetery operator **[with written approval of either the**
26 | **administrator of the office of endowed care cemeteries or a licensed practicing attorney**
27 | **with escrow powers in this state.]** It shall be the duty of the cemetery owner in the investment
28 | of such funds to exercise the diligence and care a person of reasonable prudence, intelligence and
29 | discretion would employ, but with a view to permanency of investment considering probable
30 | safety of capital investment, income produced and appreciation of capital investment. The
31 | cemetery owner's duties shall be the maintenance of records and the accounting for an
32 | investment of moneys deposited by the operator to the ~~endowed care fund~~ **endowed care trust**
33 | **fund.** For purposes of sections 214.270 to 214.410, the administrator of the office of endowed
34 | care cemeteries ~~or the licensed practicing attorney with escrow powers in this state~~ shall not be
35 | deemed to be responsible for the care, maintenance, or operation of the cemetery. With respect to
36 | cemetery property maintained by cemetery care funds, the cemetery operator shall be responsible
37 | for the performance of the care and maintenance of the cemetery property owned by the
38 | cemetery operator and for the opening and closing of all graves, crypts, or niches for human
39 | remains in any cemetery property owned by the cemetery operator.

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

1 | 4. ~~Excluding funds held in a segregated account pursuant to section 214.330, a~~ ~~endowed-care~~
2 | ~~fund~~ ~~endowed care trust funds~~ shall be administered in accordance with an ~~endowed-care~~
3 | ~~fund~~ ~~endowed care trust fund~~ agreement. The ~~endowed-care fund~~ ~~endowed care trust fund~~
4 | agreement shall be subject to review and approval by the office of endowed care cemeteries to
5 | determine compliance with Chapter 214 ***[or by a licensed practicing attorney with escrow***
6 | ***powers in this state]***. The endowed care cemetery shall be notified in writing by the office of
7 | endowed care cemeteries ***[or by a licensed practicing attorney with escrow powers in this state]***
8 | regarding the approval or disapproval of the ~~endowed-care fund~~ ~~endowed care trust fund~~
9 | agreement and regarding any changes required to be made for compliance with this chapter and
10 | the rules and regulations promulgated thereunder. A copy of the proposed ~~endowed-care~~
11 | ~~fund~~ ~~endowed care trust fund~~ agreement shall be submitted to the office of endowed care
12 | cemeteries. The office of endowed care cemeteries ***[or a licensed practicing attorney with***
13 | ***escrow powers in this state]*** shall notify the endowed care cemetery in writing of approval and of
14 | any required change. Any amendment or change to the ~~endowed-care fund~~ ~~endowed care trust~~
15 | ~~fund~~ agreement shall be submitted to the office of endowed care cemeteries ***for review and***
16 | ***approval. [or to a licensed practicing attorney with escrow powers in this state for review and***
17 | ***approval.]*** Said amendment or change shall not be effective until approved by the office of
18 | endowed care cemeteries. ***[or by a licensed practicing attorney with escrow powers in this***
19 | ***state.]*** All endowed care cemeteries shall be under a continuing duty to file with the office of
20 | endowed care cemeteries ***[or with a licensed practicing attorney with escrow powers in this***
21 | ***state]*** and to submit for approval any and all changes, amendment, or revisions of the ~~endowed~~
22 | ~~care fund~~ ~~endowed care trust fund~~ agreement, ***as specified by the office of endowed care***
23 | ***cemeteries by rule.***

24 | 5. Funds in an ~~endowed-care fund~~ ~~endowed care trust fund~~ or segregated account may
25 | ***only be commingled with*** ~~endowed-care fund~~ ~~endowed care trust funds~~ ***for other Missouri***
26 | ***endowed care cemeteries, provided that the cemetery operator and the trustee shall maintain***
27 | ***adequate accounting records of the disbursements, payments and income allocated for each***
28 | ***cemetery.***

29 | **Contributions to ~~endowed-care fund~~ ~~endowed care trust fund~~ for memorial or**
30 | **monument.**

31 | 214.335. Any endowed care cemetery may require a contribution to the ~~endowed-care~~
32 | ~~fund~~ ~~endowed care trust fund~~ or to a separate memorial care fund for each memorial or
33 | monument installed on a grave in the cemetery. Such contribution, if required by a cemetery,
34 | shall not exceed twenty cents per square inch of base area, and shall be charged on every
35 | installation regardless of the person performing the installation. Each contribution made pursuant
36 | to a contract or agreement entered into after August 28, 1990, shall be entrusted and
37 | administered pursuant to sections 214.270 to 214.410 for the ~~endowed-care fund~~ ~~endowed care~~
38 | ~~trust fund~~. Each contribution made pursuant to a contract or agreement entered into before
39 | August 28, 1990, shall be governed by the law in effect at the time the contract or agreement was
40 | entered into.

41 | (L. 1990 H.B. 1079, A.L. 1994 S.B. 496)

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Report required--content--oath--filing required.

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

- (1) Name and address of the trustee of the ~~endowed care fund~~endowed care trust fund and the depository, if different from the trustee;
- (2) Balance per previous year's report;
- (3) Principal contributions received since previous report;
- (4) Total earnings since previous report;
- (5) Total distribution to the cemetery operator since the previous report;
- (6) Current balance;
- (7) A statement of all assets listing cash, real or personal property, stocks, bonds, and other assets, showing cost, acquisition date and current market value of each asset;
- (8) Total expenses, excluding distributions to cemetery operator, since previous report; and
- (9) A statement of the cemetery's total acreage and of its developed acreage.

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

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

4. Each cemetery operator who establishes a segregated account pursuant to subsection 1 of section [214.385] **214.387** shall file with the report required under subsection 1 of this section a segregated account report that shall provide the following information:

(1) The number of monuments, markers and memorials that have been deferred for delivery by purchase designation;

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

(3) The amount on deposit in the segregated account established pursuant to section [214.385] 214.387, and the account number.

(L. 1961 p. 538 § 9, A.L. 1990 H.B. 1079, A.L. 1994 S.B. 496 merged with S.B. 701)

Sale of cemetery plot--written statement to be given to purchaser--copy of annual report to be available to public.

214.345. 1. Any cemetery operator who negotiates the sale of burial space in any cemetery located in this state shall provide each prospective owner of burial space a written statement, which may be a separate form or a part of the sales contract, which states and explains in plain language that the burial space is part of an endowed care cemetery; that the cemetery has established and maintains the ~~endowed care fund~~endowed care trust fund required by law; and that the information regarding the fund described in section 214.340 is available to the prospective purchaser. If the burial space is in a nonendowed cemetery, or in a nonendowed section of an endowed care cemetery, the cemetery operator shall state he has elected not to establish an ~~endowed care fund~~endowed care trust fund.

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

(L. 1990 H.B. 1079, A.L. 1994 S.B. 496 merged with S.B. 701)

Private use of trust funds prohibited.

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

(L. 1961 p. 538 § 14, A.L. 1994 S.B. 496 § 214.360 subsec. 1)

Bankruptcy, assignment for benefit of creditors, ~~endowed care fund~~endowed care trust fund exempt.

214.363. In the event of a cemetery's bankruptcy, insolvency, or assignment for the benefit of creditors, the ~~endowed care fund~~endowed care trust funds shall not be available to any creditor as

1 assets of the cemetery's owner or to pay any expenses of any bankruptcy or similar proceeding,
2 but shall be retained intact to provide for the future maintenance of the cemetery.

3 (A.L. 1994 S.B. 496 § 214.360 subsec. 2)
4
5

6 **Public cemetery failing to provide maintenance--abandonment or ceasing to**
7 **operate, division's duties.**

8 214.365. Prior to any action as provided in subsection 2 of section 214.205, and when the
9 division has information that a public cemetery is not providing maintenance and care, has been
10 abandoned, or has ceased operation, the division may investigate the cemetery to determine the
11 cemetery's current status. If the division finds evidence that the cemetery is abandoned, is not
12 conducting business, or is not providing maintenance and care, the division may apply to the
13 circuit court for appointment as receiver, trustee, or successor in trust.

14 (A.L. 1994 S.B. 496 § 214.360 subsec. 3)
15
16

17 **Prospective purchaser of endowed care cemetery, right to recent audit--right to**
18 **continue operation, notification by division.**

19 214.367.1. A prospective purchaser or transferee of any endowed care cemetery, with
20 the written consent of the cemetery operator, may obtain a copy of the cemetery's most recent
21 audit or inspection report from the division. The division shall inform the prospective purchaser
22 or transferee, within thirty days, whether the cemetery may continue to operate and be
23 represented as an endowed care cemetery.

24 2. At least thirty days prior to selling or transferring the ownership or control of a
25 cemetery, a cemetery operator shall give written notification to the office of its intent to
26 engage in such sale or transfer. The written notice shall contain the name and address of
27 the purchaser or transferee. Upon receipt of such written notification, the office may audit
28 or examine the books and records of the cemetery operator to determine if any shortages
29 or deficiencies exist in the ~~endowed care fund~~endowed care trust fund or any segregated
30 account. The office may waive the requirements of this subsection, or may shorten the
31 period of notification, whenever in its discretion it determines that compliance with its
32 provisions are not necessary.

33 a. If, after audit or examination, the office determines a shortage or deficiency
34 exists or existed in the amount of funds required to be set aside and deposited in the
35 ~~endowed care fund~~endowed care trust fund or a segregated account that was not remedied
36 prior to selling or otherwise transferring ownership or control of the cemetery, the division
37 may require the new cemetery operator to post a bond or certificate of deposit as provided
38 in section 214.323.1. The division may execute or liquidate the bond or certificate of
39 deposit if the shortage or deficiency is not remedied within one-hundred and eighty days of
40 notification from the division of the shortage or deficiency. All proceeds of the bond or
41 certificate of deposit shall be deposited into the designated ~~endowed care fund~~endowed care
42 trust fund or segregated account.

43 1. If control or ownership of the ~~endowed care fund~~endowed care trust
44 fund or segregated account has been transferred to the transferee or purchaser or the

transferee or purchaser has assumed or become legally obligated by contract or other agreement for the amounts held in the ~~endowed care fund~~endowed care trust fund or segregated account, the office may remit payment to the transferee or purchaser of the cemetery.

2. The transferee or purchaser shall deposit any funds received pursuant to this section into the ~~endowed care fund~~endowed care trust fund or segregated account for the cemetery, provided that the transferee or purchasing cemetery operator shall not be required to deposit the funds in the ~~endowed care fund~~endowed care trust fund or segregated account if the shortage or deficiency in the fund or account has previously been remedied.

b. The provisions of this section shall not be construed to exempt any current or former cemetery operator or licensee from any liability, suit or damages otherwise authorized by law.

3. Failure to provide the notification required by this section shall be grounds for discipline against a current or former cemetery operator, including assessing an administrative penalty as authorized by section 214.410.

(L. 1994 S.B. 496 § 214.360 subsec. 4, A.L. 2001 H.B. 567)

(L. 1994 S.B. 496 § 214.360 subsec. 4, A.L. 2001 H.B. 567)

Nonendowed cemetery to post signs and give notice of its character.

214.370. 1. Every operator of a nonendowed cemetery shall comply with the provisions of this section.

2. Every person subject to this section shall post in a conspicuous place in every office where sales of burial space in a nonendowed cemetery are conducted, a legible sign stating, "This is a nonendowed cemetery." The lettering of this sign shall be of suitable size so it is easily read at a distance of fifty feet.

3. Every person subject to this section shall also have printed or stamped at the head of all contracts, deeds, statements, letterheads, and advertising material, used in any connection with the sale of burial space in a nonendowed cemetery, the statement: "This is a nonendowed cemetery." in lettering equivalent to a minimum of ten point number two black type, and shall not sell any lot or interment space therein unless and until the purchaser thereof is informed that the cemetery is a nonendowed cemetery.

4. The division may investigate a nonendowed cemetery to determine compliance with the provisions of sections 214.270 to 214.410.

(L. 1961 p. 538 § 10)

Nonendowed section of endowed care cemetery--signs and notice.

214.380. An endowed care cemetery may have within its confines a section which may be sold without endowed care; provided, that such section shall be separately set off from the remainder of the cemetery and provided that signs are kept prominently placed around such section stating, "This is a nonendowed section." in lettering of suitable size so it is easily read at a distance of fifty feet. There shall be printed or stamped at the head of all contracts, deeds, statements, letterheads and advertising material used in any connection with the sale of burial space in said section, the statement, "This is a nonendowed section." in lettering equivalent to a

1 minimum of ten point number two black type. No operator shall sell any lot or interment space in
2 a nonendowed section unless and until he shall have informed the purchaser thereof that the
3 section is not endowed.

4 (L. 1961 p. 538 § 11)
5
6

7 **Moving of grave marker, replacement--delivery of monument, marker, or**
8 **memorial.**

9 214.385. 1. If the operator of any cemetery or another authorized person moves a grave marker,
10 memorial or monument in the cemetery for any reason, the operator or other authorized person
11 shall replace the grave marker, memorial or monument to its original position within a
12 reasonable time.

13 2. When the purchase price of a monument, marker or memorial sold by a cemetery operator or
14 its agent is paid in full, the cemetery operator shall make delivery of such property within a
15 reasonable time. A cemetery operator may comply with this section by delivering to the
16 purchaser of such property a valid warehouse receipt which may be presented to the cemetery
17 operator at a later date for actual delivery.

18 (L. 1990 H.B. 1079, A.L. 1994 S.B. 496 § 214.385 subsecs. 1, 2(a) merged with S.B. 701)
19
20

21 **Monuments, markers or memorial funds to be deposited in segregated account--**
22 **authorized withdrawals--commingling of funds prohibited--deferment of**
23 **performance, when--trusteed accounts, procedure for withdrawals.**

24 214.387. 1. Upon written instructions from the purchaser of a monument, marker or memorial, a
25 cemetery may defer delivery of such property to a date designated by the purchaser, provided the
26 cemetery operator, within forty-five days of the date the property is paid in full, deposits from its
27 own funds an amount equal to one hundred ten percent of such property's wholesale cost into a
28 segregated account. Funds deposited in a segregated account pursuant to this section and section
29 214.385 shall be maintained in such account until delivery of the property is made or the contract
30 for the purchase of such property is canceled. No withdrawals may be made from the cemetery
31 operator's segregated account established pursuant to this section and section 214.385 except as
32 provided herein. The cemetery operator shall not commingle any other of its funds with the
33 deposits made to the segregated account. Money in this account shall be invested utilizing the
34 "prudent man theory" and is subject to audit by the division. Names and addresses of
35 depositories of such money shall be submitted with the annual report.

36 2. If at the end of a calendar year the market value of the cemetery operator's segregated account
37 exceeds the then current wholesale cost of all paid-in-full property which has not been delivered,
38 the cemetery operator may withdraw from the segregated account all realized income earned by
39 such account. If at the end of a calendar year the market value of the cemetery operator's
40 segregated account is less than the then current wholesale cost of all paid-in-full property which

1 has not been delivered, the cemetery operator shall only withdraw the realized income in excess
2 of (i) the segregated account's market value at year end, plus (ii) all realized income accrued to
3 the segregated account minus (iii) the wholesale cost of all paid-in-full property which has not
4 been delivered.

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

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

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

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

31 (L. 1994 S.B. 496 § 214.385 subsec. 2 subdvs. (b), (c), (d) merged with S.B. 701, A.L. 2002 S.B. 892)
32
33

34 **Existing cemeteries to operate under law--local law applicable.**

35 214.390. Cemeteries existing at the time of the adoption of sections 214.270 to 214.410 shall
36 hereafter be operated subject to the provisions of sections 214.270 to 214.410. Where an
37 ordinance or order is established by a county, city, town or village which relates to the
38 maintenance of cemetery property, including the control of weeds and other debris, all
39 cemeteries, including nonperpetual cemeteries, shall be maintained consistent with the provisions
40 of the ordinance or order.

Division of professional registration, duties and powers in regulation of cemeteries--rulemaking authority.

214.392. 1. The division shall:

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

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

(3) Be allowed to convey full authority to each city or county governing body the use of inmates controlled by the department of corrections and the board of probation and parole to care for abandoned cemeteries located within the boundaries of each city or county;

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

(5) Investigate complaints against endowed or non-endowed care cemeteries to determine compliance with Chapter 214. This subsection shall not apply to property restricted in use for the interment of the human dead by formal dedication or reservation by deed that is held or operated by the state or federal government or any political subdivision thereof, any incorporated city or town, any county or any religious organization, cemetery association or fraternal society holding the same for sale solely to members and their immediate families.

(6) Audit or examine the books and records of an endowed care cemetery as authorized by the provisions of Chapter 214. The division may assess the costs of any such audit or examination to the cemetery operator if the audit or examination determines the cemetery operator has fraudulently, misleadingly or repeatedly violated any provision of section 214.270 to 214.410.

[(5)] (7) The division may promulgate rules necessary to implement the provisions of sections 214.270 to 214.516, including but not limited to:

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

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

(c) Rules for the establishment and maintenance of the cemetery registry pursuant to section 214.283, and;

(d) Rules prescribing an ~~endowed care fund~~ endowed care trust fund agreement that meet the requirements of Chapter 214, RSMo.

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

(L. 1994 S.B. 496, A.L. 2001 H.B. 567)

Citation of law.

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

(L. 1961 p. 538 § 1)

Violation of law, penalty.

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

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

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

4. Any person who shall willfully violate any provision of section 214.320, 214.330, 214.335, 214.340, 214.360, **214.323**, [or] 214.385 **or 214.387** or violates any rule, regulation or order of the division may, in accordance with the regulations issued by the division, be assessed an

1 administrative penalty by the division. The penalty shall not exceed five thousand dollars for
2 each violation and each day of the continuing violation shall be deemed a separate violation for
3 purposes of administrative penalty assessment. However, no administrative penalty may be
4 assessed until the ~~person-person~~ charged with the violation has been given the opportunity for a
5 hearing on the violation. Penalty assessments received shall be deposited in the endowed care
6 cemetery audit fund created in section 193.265, RSMo.

7 **4. Notwithstanding any other provision of this section, the board may automatically**
8 **suspend a license if the Board finds, after an inspection, examination, investigation or**
9 **audit, a shortage of more than five percent or five thousand dollars, whichever is greater,**
10 **in any trust or separate account maintained pursuant to this chapter. Failure to provide**
11 **access to the licensee's books, records or accounts as requested by the board in any**
12 **inspection, investigation, examination or audit initiated pursuant to this subsection to**
13 **determine whether suspension is warranted shall constitute grounds for automatic**
14 **suspension as provided in this section.**

15 (L. 1961 p. 538 § 15, A.L. 1990 H.B. 1079, A.L. 1994 S.B. 496 merged with S.B. 701)
16
17

18 **Indian cemeteries, how established--trust fund authorized.**

19 214.450. Any native American group which is comprised of persons who are members of an
20 Indian organization recognized by the United States pursuant to P.L. 93-638; 95-608, which
21 desires to secure a tribal or group burial ground or cemetery on lands owned by such group or
22 tribe may designate any quantity of that land for that purpose, and such grounds shall be
23 established, maintained, and held in perpetuity as burial grounds or cemeteries for the use and
24 benefit of the descendants of the group or tribe making such a designation. Such group shall not
25 be required to convey title to such lands to the county commission to be held in trust pursuant to
26 section 214.090. Such group may establish a trust fund for the benefit of such cemeteries or
27 burial grounds pursuant to section 214.140.

28 (L. 1990 S.B. 625 § 1)
29
30

31 **Destruction or defacing any cemetery property, penalty.**

32 214.455. Every person who shall knowingly destroy, mutilate, disfigure, deface, injure, or
33 remove any tomb, monument, or gravestone, or other structure placed in such cemetery or burial
34 ground or place of burial of any human being, is guilty of a class A misdemeanor.

35 (L. 1990 S.B. 625 § 2)
36
37

38 **Cemeteries acquired by the city at tax sales or as nuisances may be sold.**

1 214.500. Any cemetery located in a city **[not within a county]**, which has become the property
2 of such city pursuant to section 214.205 or a public tax sale may be sold to another cemetery
3 operator or a not-for-profit corporation which is unrelated to the previous cemetery operator.

4 (L. 1997 H.B. 592 § 1 and S.B. 58 § 1)
5

6 **No liability for new cemetery operators, when--rights of holders of contracts for**
7 **burial.**

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

16 (L. 1997 H.B. 592 § 2 merged with S.B. 58 § 2)
17
18

19 **Previous cemetery owner liable, when.**

20 214.508. Any cemetery operator who purchases a cemetery from a city **[not within a county]**
21 shall not be held liable or responsible for any conditions existing or actions taken which occurred
22 prior to the cemetery operator's purchase from such city; except that, the exemption provided in
23 this section shall not relieve any previous owner or wrongdoer for their actions related to such
24 cemetery.

25 (L. 1997 H.B. 592 § 3 merged with S.B. 58 § 3)
26
27

28 **New cemetery owner not liable for deficiencies, exception.**

29 214.512. Any subsequent cemetery owner after a city **[not within a county]** shall be exempt
30 from the provisions of section 214.325 and section 214.410 for any deficiency existing prior to
31 such city's ownership; except that, such exemption shall not relieve any previous cemetery
32 owners or wrongdoers from the provisions of such sections.

33 (L. 1997 H.B. 592 § 4 merged with S.B. 58 § 4)
34
35

36 **Registration as an endowed care cemetery, when--compliance with endowed care**
37 **cemetery law required.**

38 214.516. Any cemetery owner subsequent to a city **[not within a county]**, regardless of whether
39 such cemetery was previously registered as an endowed care cemetery, held itself out to be an

1 endowed care cemetery or was a nonendowed care cemetery, shall comply with section 214.310
2 and register such cemetery as an endowed care cemetery as if it were a newly created cemetery
3 with no interments at the time of such registration. Any contracts for the right of burial sold after
4 compliance with section 214.310 and all subsequent action of a subsequent cemetery owner shall
5 comply fully with the provisions of sections 214.270 to 214.410.

6 (L. 1997 H.B. 592 § 5 merged with S.B. 58 § 5)
7
8

9 **Scatter gardens, operation by churches maintaining religious cemeteries--**
10 **maintenance of garden and records, duty of operator.**

11 214.550. 1. For purposes of this section, the following terms mean:

12 (1) "Cremains", the ashes that remain after cremation of a human corpse;

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

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

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

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

21 3. The operator of any religious cemetery containing a scatter garden shall maintain, protect, and
22 supervise the scatter garden, and shall be responsible for all costs incurred for such maintenance,
23 protection, and supervision. Such operator shall also maintain a record of all cremains scattered
24 in the scatter garden that shall include the name, date of death, and Social Security number of
25 each person whose cremains are scattered, and the date the cremains were scattered.

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

31 (L. 2002 H.B. 1148)
32

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