

FIRST REGULAR SESSION

HOUSE BILL NO. 945

95TH GENERAL ASSEMBLY

INTRODUCED BY REPRESENTATIVES WELLS (Sponsor), WASSON, FRANZ, SCHARNHORST, WILSON (130), WRIGHT, NANCE, BRANDOM, DENISON, RUESTMAN, DOUGHERTY, SPRENG, NORR, YAEGER AND SCHOEMEHL (Co-sponsors).

2200L.011

D. ADAM CRUMBLISS, Chief Clerk

AN ACT

To repeal sections 214.270, 214.276, 214.277, 214.280, 214.283, 214.290, 214.300, 214.310, 214.320, 214.325, 214.330, 214.335, 214.340, 214.345, 214.360, 214.363, 214.365, 214.367, 214.385, 214.387, 214.392, 214.400, 214.410, 214.455, 214.500, 214.504, 214.508, 214.512, 214.516, and 214.550, RSMo, and to enact in lieu thereof thirty-one new sections relating to cemeteries, with penalty provisions.

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

Section A. Sections 214.270, 214.276, 214.277, 214.280, 214.283, 214.290, 214.300, 214.310, 214.320, 214.325, 214.330, 214.335, 214.340, 214.345, 214.360, 214.363, 214.365, 214.367, 214.385, 214.387, 214.392, 214.400, 214.410, 214.455, 214.500, 214.504, 214.508, 214.512, 214.516, and 214.550, RSMo, are repealed and thirty-one new sections enacted in lieu thereof, to be known as sections 214.270, 214.276, 214.277, 214.280, 214.282, 214.283, 214.300, 214.310, 214.320, 214.325, 214.330, 214.335, 214.340, 214.345, 214.360, 214.363, 214.365, 214.367, 214.385, 214.387, 214.389, 214.392, 214.400, 214.410, 214.455, 214.500, 214.504, 214.508, 214.512, 214.516, and 214.550, to read as follows:

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

- (1) "Agent" or "authorized agent", any person empowered by the cemetery operator to represent the operator in dealing with the general public, including owners of the burial space in the cemetery;
- (2) "Burial space", one or more than one plot, grave, mausoleum, crypt, lawn, surface lawn crypt, niche or space used or intended for the interment of the human dead;

EXPLANATION — Matter enclosed in bold-faced brackets [thus] in the above bill is not enacted and is intended to be omitted from the law. Matter in **bold-face** type in the above bill is proposed language.

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

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

15 [(4)] (5) "Cemetery association", any number of persons who shall have associated
16 themselves by articles of agreement in writing as a not-for-profit association or organization,
17 whether incorporated or unincorporated, formed for the purpose of ownership, preservation, care,
18 maintenance, adornment and administration of a cemetery. Cemetery associations shall be
19 governed by a board of directors. Directors shall serve without compensation;

20 [(5)] (6) "Cemetery operator" or "operator", any person who owns, controls, operates
21 or manages a cemetery;

22 [(6)] (7) **"Cemetery prearranged contract", any contract with a cemetery operator**
23 **for goods and services covered by this chapter which includes a sale of burial merchandise**
24 **in which delivery of merchandise or a valid warehouse receipt under sections 214.270 to**
25 **214.550 is deferred pursuant to written instructions from the purchaser. It shall also mean**
26 **any contract for goods and services covered by sections 214.270 to 214.550 which includes**
27 **a sale of burial services to be performed at a future date;**

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

33 [(7)] (9) "Columbarium", a building or structure for the inurnment of cremated human
34 remains;

35 [(8)] (10) "Community mausoleum", a mausoleum containing a substantial area of
36 enclosed space and having either a heating, ventilating or air conditioning system;

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

39 [(9)] (12) "Department", department of insurance, financial institutions and professional
40 registration;

41 [(10)] (13) "Developed acreage", the area which has been platted into grave spaces and
42 has been developed with roads, paths, features, or ornamentations and in which burials can be
43 made;

44 [(11)] (14) "Director", director of the division of professional registration;

45 [(12)] (15) "Division", division of professional registration;

46 [(13)] (16) "Endowed care", the maintenance, repair and care of all burial space subject
47 to the endowment within a cemetery, including any improvements made for the benefit of such
48 burial space. Endowed care shall include the general overhead expenses needed to accomplish
49 such maintenance, repair, care and improvements. Endowed care shall include the terms
50 perpetual care, permanent care, continual care, eternal care, care of duration, or any like term;

51 [(14)] (17) "Endowed care cemetery", a cemetery, or a section of a cemetery, which
52 represents itself as offering endowed care and which complies with the provisions of sections
53 214.270 to 214.410;

54 [(15)] (18) "Endowed care **trust** fund", "endowed care trust", or "trust", any cash or cash
55 equivalent, to include any income therefrom, impressed with a trust by the terms of any gift,
56 grant, contribution, payment, devise or bequest to an endowed care cemetery, or its endowed care
57 trust, or funds to be delivered to an endowed care cemetery's trust received pursuant to a contract
58 and accepted by any endowed care cemetery operator or his agent. This definition includes the
59 terms endowed care funds, maintenance funds, memorial care funds, perpetual care funds, or any
60 like term;

61 (19) "**Escrow account**", **an account established in lieu of an endowed care trust**
62 **fund as provided under section 214.330 or an account used to hold deposits under section**
63 **214.387;**

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

67 (21) "**Escrow agreement**", **an agreement subject to approval by the office between**
68 **an escrow agent and a cemetery operator or its agent or related party with common**
69 **ownership, to receive and administer payments under cemetery prearranged contracts sold**
70 **by the cemetery operator;**

71 [(16)] (22) "Family burial ground", a cemetery in which no burial space is sold to the
72 public and in which interments are restricted to persons related by blood or marriage;

73 [(17)] (23) "Fraternal cemetery", a cemetery owned, operated, controlled or managed
74 by any fraternal organization or auxiliary organizations thereof, in which the sale of burial space
75 is restricted solely to its members and their immediate families;

76 [(18)] **(24)** "Garden mausoleum", a mausoleum without a substantial area of enclosed
77 space and having its crypt and niche fronts open to the atmosphere. Ventilation of the crypts by
78 forced air or otherwise does not constitute a garden mausoleum as a community mausoleum;

79 [(19)] **(25)** "Government cemetery", or "municipal cemetery", a cemetery owned,
80 operated, controlled or managed by the federal government, the state or a political subdivision
81 of the state, including a county or municipality or instrumentality thereof;

82 [(20)] **(26)** "Grave" or "plot", a place of ground in a cemetery, used or intended to be
83 used for burial of human remains;

84 [(21)] **(27)** "Human remains", the body of a deceased person in any state of
85 decomposition, as well as cremated remains;

86 [(22)] **(28)** "Inurnment", placing an urn containing cremated remains in a burial space;

87 [(23)] **(29)** "Lawn crypt", a burial vault or other permanent container for a casket which
88 is permanently installed below ground prior to the time of the actual interment. A lawn crypt
89 may permit single or multiple interments in a grave space;

90 [(24)] **(30)** "Mausoleum", a structure or building for the entombment of human remains
91 in crypts;

92 [(25)] **(31)** "Niche", a space in a columbarium used or intended to be used for inurnment
93 of cremated remains;

94 [(26)] **(32)** "Nonendowed care cemetery", or "nonendowed cemetery", a cemetery or a
95 section of a cemetery for which no endowed care **trust** fund has been established in accordance
96 with sections 214.270 to 214.410;

97 **(33)** "Office", **the office of endowed care cemeteries within the division of**
98 **professional registration;**

99 [(27)] **(34)** "Owner of burial space", a person to whom the cemetery operator or his
100 authorized agent has transferred the right of use of burial space;

101 [(28)] **(35)** "Person", an individual, corporation, partnership, joint venture, association,
102 trust or any other legal entity;

103 [(29)] **(36)** "Registry", the list of cemeteries maintained in the division office for public
104 review. The division may charge a fee for copies of the registry;

105 [(30)] **(37)** "Religious cemetery", a cemetery owned, operated, controlled or managed
106 by any church, convention of churches, religious order or affiliated auxiliary thereof in which the
107 sale of burial space is restricted solely to its members and their immediate families;

108 **(38)** "Scatter garden", **a location for the spreading of cremains set aside within a**
109 **cemetery;**

110 [(31)] **(39)** "Surface lawn crypt", a sealed burial chamber whose lid protrudes above the
111 land surface;

112 [(32)] (40) "Total acreage", the entire tract which is dedicated to or reserved for
113 cemetery purposes;

114 [(33)] (41) "Trustee of an endowed **trust** care fund", the separate legal entity appointed
115 as trustee of an endowed care **trust** fund.

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

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

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

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

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

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

24 (5) Incompetence, misconduct, gross negligence, fraud, misrepresentation or dishonesty
25 in the performance of the functions or duties of any profession regulated by sections 214.270 to
26 214.516;

27 (6) Violation of, or assisting or enabling any person to violate, any provision of sections
28 214.270 to 214.516, or any lawful rule or regulation adopted pursuant to sections 214.270 to
29 214.516;

30 (7) Impersonation of any person holding a license or allowing any person to use his or
31 her license;

32 (8) Disciplinary action against the holder of a license or other right to practice any
33 profession regulated by sections 214.270 to 214.516 granted by another state, territory, federal
34 agency or country upon grounds for which revocation or suspension is authorized in this state;

35 (9) A person is finally adjudged insane or incompetent by a court of competent
36 jurisdiction;

37 (10) Assisting or enabling any person to practice or offer to practice any profession
38 licensed or regulated by sections 214.270 to 214.516 who is not registered and currently eligible
39 to practice pursuant to sections 214.270 to 214.516;

40 (11) Issuance of a license based upon a material mistake of fact;

41 (12) Failure to display a valid license;

42 (13) Violation of any professional trust or confidence;

43 (14) Use of any advertisement or solicitation which is false, misleading or deceptive to
44 the general public or persons to whom the advertisement or solicitation is primarily directed;

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

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

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

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

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

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

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

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

12 2. Any such action shall be commenced either in the county in which such conduct
13 occurred, **in Cole County**, or in the county in which the defendant resides.

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

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

14 2. The division may adopt rules establishing the conditions and procedures governing
15 the circumstances where an endowed care cemetery elects to operate as a nonendowed care
16 cemetery. In the event an endowed care cemetery elects to operate as a nonendowed care
17 cemetery, the division shall make every effort to require such cemetery to meet all contractual

18 obligations for the delivery of services entered into prior to it reverting to the status of a
19 nonendowed cemetery.

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

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

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

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

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

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

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

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

**214.283. 1. Any person, entity, association, city, town, village, county, or political
2 subdivision that purchases, receives, or holds any real estate used for the burial of dead
3 human bodies, excluding a family burial ground, shall notify the office of the endowed care
4 cemeteries of the name, location, and address of such real estate on a form approved by the
5 office before October 1, 2009, or within thirty days of purchasing, receiving or holding
6 such land or of being notified by the office of the requirements of this provision. No fee
7 shall be charged for such notification nor shall any penalty be assessed for failure to
8 register. This section shall not be deemed to exempt any operator of an endowed care
9 cemetery or nonendowed care cemetery from being duly licensed as required by this
10 chapter.**

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

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

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

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

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

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

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

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

21 the administrator of the office of endowed care cemeteries for an order to dissolve the surety
22 bond requirement, so long as at least twenty-five thousand dollars always remains in the
23 endowed care **trust** fund.

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

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

214.320. 1. An operator of an endowed care cemetery shall establish and deposit in an
2 endowed care **trust** fund not less than the following amounts for burial space sold or disposed
3 of, with such deposits to the endowed care **trust** fund to be made [semiannually] **at least**
4 **quarterly** on all burial space that has been fully paid for to the date of deposit:

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

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

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

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

17 2. Notwithstanding the provisions of subdivision (2) of subsection 1 of this section, a
18 cemetery operator who has made the initial deposit in trust as required by sections 214.270 to
19 214.410 from his own funds, and not from funds deposited with respect to sales of burial space,
20 may deposit only one-half the minimum amounts set forth in subdivisions (1) and (2) of
21 subsection 1 of this section, until he shall have recouped his entire initial deposit. Thereafter,

22 he shall make the minimum deposits required under subdivisions (1), (2) [and] , (3), **and (4)** of
23 subsection 1 of this section.

24 **3. As required by section 214.340**, each operator of an endowed care cemetery shall[,
25 after August 28, 1990,] file with the division of professional registration, on a form provided by
26 the division, an annual endowed care trust fund report. The operator of any cemetery
27 representing the cemetery, or any portion of the cemetery, as an endowed care cemetery shall
28 make available to the division for inspection or audit at any reasonable time only those cemetery
29 records and trust fund records necessary to determine whether the cemetery's endowed care **trust**
30 fund is in compliance with sections 214.270 to 214.410. Each cemetery operator who has
31 established a [segregated] **escrow** account pursuant to section [214.385] **214.387** shall make
32 available to the division for inspection or audit at any reasonable time those cemetery records
33 and financial institution records necessary to determine whether the cemetery operator is in
34 compliance with the provisions of section [214.385. All documents, records, and work product
35 from any inspections or audits performed by or at the direction of the division shall remain in the
36 possession of the division of professional registration and shall not be sent to the state board of
37 embalmers and funeral directors. No charge shall be made for such inspections or audits]
38 **214.387.**

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

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

46 **5. A cemetery operator shall be exempt from the provisions of chapter 436, RSMo,**
47 **for the sale of cemetery services or for grave lots, grave spaces, markers, monuments,**
48 **memorials, tombstones, crypts, niches or mausoleums, outer burial containers, or other**
49 **receptacle. A cemetery operator shall be prohibited from adjusting or establishing the**
50 **sales price of items with the intent of evading the trusting or escrow provisions of this**
51 **chapter.**

214.325. If the deposits to any endowed care **trust** fund [required by sections 214.270
2 to 214.410] are less than the total sum required to be set aside and deposited since the effective
3 date of such sections, the cemetery operator shall correct such deficiency **including interest of**
4 **ten percent of the deficiency** by depositing not less than twenty percent of such deficiency each
5 year for five years [following August 28, 1990,] and shall file, on the form provided by the
6 division, a statement outlining the date and amount such deposits were made. If the cemetery

7 operator fails to correct the deficiency **with respect to funds maintained under section**
8 **214.330**, the cemetery operator shall thereafter not represent the cemetery as an endowed care
9 cemetery. Any funds held in the cemetery's endowed care trust shall continue to be used for
10 endowed care for that cemetery. The cemetery operator shall remain subject to the provisions
11 of sections 214.270 to 214.410 for any cemetery or any section of the cemetery for which
12 endowed care payments have been collected, subject to the penalties contained in section
13 214.410, and civil actions as well as subject to any regulations promulgated by the division. **For**
14 **purposes of this section, the term "deficiency" shall mean a deficiency in the amount**
15 **required to be deposited under section 214.320, or a deficiency created by disbursements**
16 **in excess of what is permitted under section 214.330 and shall not include or be affected by**
17 **deficiencies or shortages caused by the fluctuating value of investments.**

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

26 maintenance of the cemetery property owned by the cemetery operator and for the opening and
27 closing of all graves, crypts, or niches for human remains in any cemetery property owned by the
28 cemetery operator.

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

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

60 4. All endowed care funds shall be administered in accordance with an endowed care
61 fund agreement. The endowed care fund agreement shall be subject to review and approval by

62 the office of endowed care cemeteries or by a licensed practicing attorney with escrow powers
63 in this state. The endowed care cemetery shall be notified in writing by the office of endowed
64 care cemeteries or by a licensed practicing attorney with escrow powers in this state regarding
65 the approval or disapproval of the endowed care fund agreement and regarding any changes
66 required to be made for compliance with this chapter and the rules and regulations promulgated
67 thereunder. A copy of the proposed endowed care fund agreement shall be submitted to the
68 office of endowed care cemeteries. The office of endowed care cemeteries or a licensed
69 practicing attorney with escrow powers in this state shall notify the endowed care cemetery in
70 writing of approval and of any required change. Any amendment or change to the endowed care
71 fund agreement shall be submitted to the office of endowed care cemeteries or to a licensed
72 practicing attorney with escrow powers in this state for review and approval. Said amendment
73 or change shall not be effective until approved by the office of endowed care cemeteries or by
74 a licensed practicing attorney with escrow powers in this state. All endowed care cemeteries
75 shall be under a continuing duty to file with the office of endowed care cemeteries or with a
76 licensed practicing attorney with escrow powers in this state and to submit for approval any and
77 all changes, amendment, or revisions of the endowed care fund agreement.] **(1) The endowed**
78 **care trust fund required by sections 214.270 to 214.410 shall be permanently set aside in**
79 **trust or in accordance with the provisions of subsection 2 of this section. The trustee of the**
80 **endowed care trust shall be a state or federally chartered financial institution authorized**
81 **to exercise trust powers in Missouri. The trust officer or duly appointed representative of**
82 **the trustee with knowledge and immediate access to the trust fund accounting and trust**
83 **fund records shall be made available to the office or its duly authorized representative**
84 **upon request.**

85 **(2) The trust fund records, including all trust fund accounting records, shall be**
86 **maintained in the state of Missouri at all times or shall be electronically stored so that the**
87 **records may be immediately accessed and produced in the state of Missouri within five**
88 **business days of request, or as otherwise requested by the office or its duly authorized**
89 **representative. The operator of an endowed care cemetery shall maintain a current name**
90 **and address of the trustee and the records custodian for the endowed care trust fund with**
91 **the office and shall provide written notification to the office within five days of any change**
92 **in the name or address of the trustee or custodian of records. Notwithstanding any other**
93 **provision of law, the identity of the trustee designated by an endowed care cemetery shall**
94 **be deemed an open record;**

95 **(3) Missouri law shall control all endowed care trust funds and the principal place**
96 **of administration shall at all times be in the state of Missouri, and shall be deemed to be**

97 there regardless of where records may be kept or various administrative tasks may be
98 performed, and shall not be changed to any other jurisdiction.

99 **2. An endowed care trust fund shall be administered as a charitable trust in which**
100 **no specified charitable organization has a beneficial interest and a trust in which the**
101 **attorney general of this state is treated as the only qualified beneficiary under the**
102 **provisions of subsection 2 of section 456.110, RSMo, in accordance with Missouri law**
103 **governing trusts, including but not limited to the applicable provisions of chapters 456 and**
104 **469, RSMo, except as specifically provided in this subsection or where the provisions of**
105 **sections 214.270 to 214.410 provide differently. An endowed care fund shall also be**
106 **operated in accordance with chapters 456 and 469, RSMo, provided that a cemetery**
107 **operator shall not in any circumstances be authorized to restrict, enlarge, change or modify**
108 **the requirements of this section or the provisions of chapters 456 and 469, RSMo, by**
109 **agreement or otherwise.**

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

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

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

118 **(4) All endowed care trusts shall be irrevocable;**

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

121 **(6) A unitrust election made in accordance with the provisions of chapter 469,**
122 **RSMo, shall be made by the cemetery operator in the terms of the endowed care trust fund**
123 **agreement itself and not by the trustee;**

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

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

131 **3. The cemetery operator shall have the duty and responsibility to apply the income**
132 **distributed to provide care and maintenance only for that part of the cemetery in which**

133 burial space shall have been sold and with respect to which sales the endowed care trust
134 fund shall have been established and not for any other purpose.

135 4. (1) In addition to any other duty, obligation, or requirement imposed by sections
136 214.270 to 214.410 or the endowed care trust agreement, the trustee's duties shall be the
137 maintenance of records and the accounting for and investments of moneys deposited by the
138 operator to the endowed care trust fund.

139 (2) For the purposes of sections 214.270 to 214.410, the trustee shall not be deemed
140 responsible for the care, maintenance, or operation of the cemetery, or for any other matter
141 relating to the cemetery, or the proper expenditure of funds distributed by the trustee to
142 the cemetery operator, including, but not limited to, compliance with environmental laws
143 and regulations.

144 (3) With respect to cemetery property maintained by cemetery care funds, the
145 cemetery operator shall be responsible for the performance of the care and maintenance
146 of the cemetery property.

147 5. (1) If the endowed care cemetery fund is not permanently set aside in a trust
148 fund as required by subsection 1 of this section, the funds shall be permanently set aside
149 in an escrow account in the state of Missouri. Funds in an escrow account shall be placed
150 in an endowed care trust fund under subsection 1 if the funds in the escrow account exceed
151 three hundred fifty thousand dollars, unless otherwise approved by the division for good
152 cause. The account shall be insured by the Federal Deposit Insurance Corporation or
153 comparable deposit insurance and held in a state or federally chartered financial
154 institution authorized to do business in Missouri and located in this state.

155 (2) The interest from the escrow account may be distributed to the cemetery
156 operator at least in annual or semiannual installments, but not later than six months
157 following the calendar year. Any interest not distributed within six months following the
158 end of the calendar year shall be added to and held as part of the principal of the account.

159 (3) The cemetery operator shall have the duty and responsibility to apply the
160 interest to provide care and maintenance only for that part of the cemetery in which burial
161 space shall have been sold and with respect to which sales the escrow account shall have
162 been established and not for any other purpose. The principal of such funds shall be kept
163 intact. The cemetery operator's duties shall be the maintenance of records and the
164 accounting for an investment of moneys deposited by the operator to the escrow account.
165 For purposes of sections 214.270 to 214.410, the administrator of the office of endowed care
166 cemeteries shall not be deemed to be responsible for the care, maintenance, or operation
167 of the cemetery. With respect to cemetery property maintained by cemetery care funds,

168 the cemetery operator shall be responsible for the performance of the care and
169 maintenance of the cemetery property owned by the cemetery operator.

170 (4) The division may approve an escrow agent if the escrow agent demonstrates the
171 knowledge, skill, and ability to handle escrow funds and financial transactions and is of
172 good moral character.

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

175 7. Excluding funds held in an escrow account, all endowed care trust funds shall
176 be administered in accordance with an endowed care trust fund agreement, which shall be
177 submitted to the office by the cemetery operator for review and approval. The endowed
178 care cemetery shall be notified in writing by the office of endowed care cemeteries
179 regarding the approval or disapproval of the endowed care trust fund agreement and
180 regarding any changes required to be made for compliance with sections 214.270 to 214.410
181 and the rules promulgated thereunder.

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

186 9. If the endowed care trust fund agreement, or any changes, amendments or
187 revisions filed with the office, are not disapproved by the office within thirty days after
188 submission by the cemetery operator, the endowed care trust fund agreement or the related
189 change, amendment or revision shall be deemed effective and may be used by the cemetery
190 operator and the trustee. Notwithstanding any other provision of this section, the office
191 may review and disapprove an endowed care trust fund agreement or any submitted
192 change, amendment or revision, after the thirty days provided herein or at any other time
193 if the agreement is not in compliance with sections 214.270 to 214.410 or the rules
194 promulgated thereunder. The division may waive the thirty day filing requirement upon
195 request by the cemetery operator and a showing of good cause.

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

200 11. By accepting the trusteeship of an endowed care trust or accepting funds as an
201 escrow agent under sections 214.270 to 214.410, the trustee or escrow agent submits
202 personally to the jurisdiction of the courts of this state and the office of endowed care
203 cemeteries regarding the administration of the trust or escrow account. A trustee or

204 escrow agent shall consent in writing to the jurisdiction of the state of Missouri and the
205 office in regards to the trusteeship or the operation of the escrow account and to the
206 appointment of the office of secretary of state as its agent for service of process regarding
207 any administration or legal actions relating to the trust or the escrow account, if it has no
208 designated agent for service of process located in this state. Such consent shall be filed with
209 the office prior to accepting funds under sections 214.270 to 214.410 as trustee or as an
210 escrow agent on a form provided by the office by rule.

214.335. 1. Any endowed care cemetery may require a contribution to the endowed care
2 fund or to a separate memorial care fund for each memorial or monument installed on a grave
3 in the cemetery. Such contribution, if required by a cemetery, shall not exceed twenty cents per
4 square inch of base area, and shall be charged on every installation regardless of the person
5 performing the installation. Each contribution made pursuant to a contract or agreement entered
6 into after August 28, 1990, shall be entrusted and administered pursuant to sections 214.270 to
7 214.410 for the endowed care fund. Each contribution made pursuant to a contract or agreement
8 entered into before August 28, 1990, shall be governed by the law in effect at the time the
9 contract or agreement was entered into.

10 2. If the deposits to any endowed care trust fund are less than the total sum
11 required to be set aside and deposited since the effective date of such sections, the cemetery
12 operator shall correct such deficiency including interest of ten percent of the deficiency by
13 depositing not less than twenty percent of such deficiency each year for five years and shall
14 file, on the form provided by the division, a statement outlining the date and amount such
15 deposits were made. If the cemetery operator fails to correct the deficiency with respect
16 to funds maintained under section 214.330, the cemetery operator shall thereafter not
17 represent the cemetery as an endowed care cemetery. Any funds held in the cemetery's
18 endowed care trust shall continue to be used for endowed care for that cemetery. The
19 cemetery operator shall remain subject to the provisions of sections 214.270 to 214.410 for
20 any cemetery or any section of the cemetery for which endowed care payments have been
21 collected, subject to the penalties contained in section 214.410, and civil actions as well as
22 subject to any rules promulgated by the division. For purposes of this section, the term
23 deficiency shall mean a deficiency in the amount required to be deposited under section
24 214.320, or a deficiency created by disbursements in excess of what is permitted under
25 section 214.330 and shall not include or be affected by deficiencies or shortages caused by
26 the fluctuating value of proper investments.

214.340. 1. Each operator of an endowed care cemetery shall maintain at an office in
2 the cemetery or, if the cemetery has no office in the cemetery, at an office within a reasonable

3 distance of the cemetery, the reports of the endowed care **trust** fund's operation for the preceding
4 seven years. Each report shall contain, at least, the following information:

5 (1) Name and address of the trustee of the endowed care **trust** fund and the depository,
6 if different from the trustee;

7 (2) Balance per previous year's report;

8 (3) Principal contributions received since previous report;

9 (4) Total earnings since previous report;

10 (5) Total distribution to the cemetery operator since the previous report;

11 (6) Current balance;

12 (7) A statement of all assets listing cash, real or personal property, stocks, bonds, and
13 other assets, showing cost, acquisition date and current market value of each asset;

14 (8) Total expenses, excluding distributions to cemetery operator, since previous report;
15 and

16 (9) A statement of the cemetery's total acreage and of its developed acreage.

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

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

27 4. Each cemetery operator who establishes [a segregated] **an escrow** account [pursuant
28 to subsection 1 of section 214.385] **under section 214.287** shall file with the report required
29 under subsection 1 of this section [a segregated] **an escrow** account report that shall provide the
30 following information:

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

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

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

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

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

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

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

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

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

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

12 or if the division determines in its discretion that compliance with its provisions are not
13 necessary.

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

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

23 **4. (1) The seller of a cemetery shall place fifteen percent of the consideration paid**
24 **or remitted for the purchase or transfer of a cemetery in escrow with a bank, trust**
25 **company, or other escrow agent approved by the division. Such funds shall be held in**
26 **escrow for no less than six months or such greater time as may be agreed to by the seller**
27 **and the purchaser or transferee. If the purchaser, transferee, or division determines that**
28 **the trust fund or any escrow account of the former cemetery operator is deficient, the**
29 **purchaser, transferee, or division may demand payment from the escrow agent in the**
30 **amount of the deficiency.**

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

43 **(3) The escrow agent shall refund the amount held in escrow to the seller if a**
44 **demand is not received for such funds within six months after completion of the purchase**
45 **or transfer.**

214.385. 1. If the operator of any cemetery or another authorized person moves a grave
2 marker, memorial or monument in the cemetery for any reason, the operator or other authorized

3 person shall replace the grave marker, memorial or monument to its original position within a
4 reasonable time.

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

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

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

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

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

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

48 6. The provisions of this section shall apply to all agreements entered into after August
49 28, 2002.] **With the exception of sales made under section 214.385, all sales by cemetery**
50 **operators of prearranged burial merchandise and services shall be made in accordance**
51 **with this section.**

52 **2. Upon written instructions from the purchaser of burial merchandise or burial**
53 **services set forth in a cemetery prearranged contract, a cemetery may defer delivery of**
54 **such burial merchandise or a warehouse receipt for the same under section 214.385, or**
55 **performance of services, to a date designated by the purchaser, provided the cemetery**
56 **operator, after deducting sales and administrative costs not to exceed twenty percent of the**
57 **purchase price, deposits the remaining portion of the purchase price into an escrow or**
58 **trust account as herein provided within sixty days following receipt of payment from the**
59 **purchaser. Funds so deposited under this section shall be maintained in such account until**
60 **delivery of the property or the performance of services is made or the contract for the**
61 **purchase of such property or services is cancelled. The account is subject to inspection,**
62 **examination, or audit by the division. No withdrawals may be made from the escrow or**
63 **trust account established under this section except as herein provided.**

64 **3. Each escrow arrangement shall comply with the following:**

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

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

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

81 (4) The operator shall establish a separate depository account for each cemetery
82 prearranged contract administered under this subsection;

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

85 4. Each trust shall comply with the following:

86 (1) The trustee shall be a state or federally chartered financial institution
87 authorized to exercise trust powers in Missouri; provided that a foreign financial
88 institution shall be approved by the office;

89 (2) The trust fund records, including all trust fund accounting records, shall either
90 be maintained in the state of Missouri or shall be electronically stored so that the records
91 may be immediately accessed and produced in the state of Missouri within five business
92 days of the trustee's receipt of a written request made by the office or its duly authorized
93 representative. The cemetery operator shall maintain a current name and address of the
94 trustee and the records custodian with the office and shall provide written notification to
95 the office within five days of any change in the name or address of the trustee or custodian
96 of record. Notwithstanding any other provision of law, information regarding the trustee
97 shall be deemed an open record. If the business address of the trust officer is not located
98 within the state of Missouri, the trustee shall appoint a representative with knowledge of
99 the trust records and who can provide immediate access to such records to the office and
100 its authorized representative at the cemetery or a Missouri location acceptable to the office;

101 (3) The principal of such funds shall be kept intact and appropriately invested
102 under the prudent investor rule under chapter 469, RSMo; provided that no trust funds
103 shall be invested in any term insurance product;

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

108 (5) All expenses of administering a trust, including, without limitation, trustee's
109 fees, expenses in establishing the trust, legal and accounting fees, investment expenses,
110 taxes, and other necessary and reasonable expenses shall be paid from trust income and
111 shall not be paid from trust principal;

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

114 (7) A trustee may commingle the funds from trusts of unrelated cemetery operators
115 for investment purposes when the trustee has demonstrated to the satisfaction of the office
116 adequate accounting for the allocations, disbursements, payments, and income among the
117 participating trusts.

118 5. The income from escrow accounts, after payment of expenses associated with the
119 arrangement, shall be distributed to the cemetery operator. All other distributions from
120 trusts and escrow accounts shall be made in accordance with forms approved by the office.
121 For performance of a cemetery prearranged contract, a certificate of performance form
122 signed by the cemetery operator shall be required for distribution. For cancellation of a
123 cemetery prearranged contract, a certificate of cancellation form signed by the cemetery
124 operator and the purchaser shall be required for distribution.

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

126 (1) At any time before the final disposition of the deceased or before the services
127 or merchandise described in this section are provided, the purchaser may cancel the
128 contract without cause by delivering written notice thereof to the operator. Within fifteen
129 days after its receipt of such notice, the cemetery operator shall pay to the purchaser a net
130 amount equal to all payments made into the escrow account or trust under the contract.
131 Upon delivery of the purchaser's receipt for such payment to the escrow agent or trustee,
132 the escrow agent or trustee shall distribute to the cemetery operator from the escrow
133 account or trust an amount equal to all deposits made into the escrow account or trust for
134 the contract;

135 (2) Notwithstanding the provisions of subdivision (1) of this subsection, if a
136 purchaser is eligible, becomes eligible, or desires to become eligible to receive public

137 assistance under chapter 208, RSMo, or any other applicable state or federal law, the
138 purchaser may irrevocably waive and renounce his or her right to cancel the contract
139 under the provisions of subdivision (1) of this section, which waiver and renunciation shall
140 be made in writing and delivered to the cemetery operator;

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

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

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

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

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

14 2. The division shall provide written notification to the cemetery operator and the
15 trustee, financial institution, or escrow agent no less than fourteen days prior to suspending
16 distributions under this section. The amount of any distribution suspended shall become
17 principal within six months after the date such distribution would have otherwise been
18 payable, with credit against the deficiency, unless the cemetery operator files an appeal
19 with a court of competent jurisdiction or with the administrative hearing commission, as
20 provided herein. In the event of an appeal, a cemetery operator may request the court or
21 administrative hearing commission stay the suspension of distribution after a showing of

22 necessity and good cause or authorize payment from the endowed care trust fund or
23 escrow account for necessary expenses from any amount subject to distribution.

24 **3. Upon receipt of an order from the decision suspending distribution under this**
25 **section, a trustee, financial institution, or escrow agent shall immediately suspend**
26 **distribution as required by the order. A trustee, financial institution, or escrow agent shall**
27 **be exempt from liability for failure to distribute funds as ordered by the division.**

28 **4. A cemetery operator may appeal an order suspending distribution under this**
29 **section to the administrative hearing commission. The administrative hearing commission**
30 **shall receive notice of such appeal within thirty days from the date the notice of suspension**
31 **was mailed by certified mail. Failure of a person whose license was suspended to notify the**
32 **administrative hearing commission of his or her intent to appeal waives all rights to appeal**
33 **the suspension. Upon notice of such person's intent to appeal, a hearing shall be held**
34 **before the administrative hearing commission under chapter 621, RSMo.**

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

38 **6. The division may promulgate rules to implement the provisions of this section.**
39 **Any rule or portion of a rule, as that term is defined in section 536.010, RSMo, that is**
40 **created under the authority delegated in this section shall become effective only if it**
41 **complies with and is subject to all of the provisions of chapter 536, RSMo, and, if**
42 **applicable, section 536.028, RSMo. This section and chapter 536, RSMo, are nonseverable**
43 **and if any of the powers vested with the general assembly pursuant to chapter 536, RSMo,**
44 **to review, to delay the effective date, or to disapprove and annul a rule are subsequently**
45 **held unconstitutional, then the grant of rulemaking authority and any rule proposed or**
46 **adopted after August 28, 2009, shall be invalid and void.**

214.392. 1. The division shall:

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

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

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

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

11 (5) **Be authorized, within the limits of the funds appropriated to conduct**
12 **investigations, examinations, or audits to determine compliance with sections 214.270 to**
13 **274.410;**

14 (6) The division may promulgate rules necessary to implement the provisions of sections
15 214.270 to 214.516, including but not limited to:

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

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

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

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

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

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

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

10 3. Any trustee who shall willfully violate any applicable provisions of sections 214.270
11 to 214.410 shall have committed an unsafe and unsound banking practice and shall be penalized

12 as authorized by chapters 361 and 362, RSMo. This subsection shall be enforced exclusively by
13 the Missouri division of finance for state chartered institutions and the Missouri attorney general
14 for federally chartered institutions.

15 4. Any person who shall willfully violate any provision of section 214.320, 214.330,
16 214.335, 214.340, 214.360 or 214.385 or violates any rule, regulation or order of the division
17 may, in accordance with the regulations issued by the division, be assessed an administrative
18 penalty by the division. The penalty shall not exceed five thousand dollars for each violation and
19 each day of the continuing violation shall be deemed a separate violation for purposes of
20 administrative penalty assessment. However, no administrative penalty may be assessed until
21 the person charged with the violation has been given the opportunity for a hearing on the
22 violation. Penalty assessments received shall be deposited in the endowed care cemetery audit
23 fund created in section 193.265, RSMo.

214.455. Every person who shall knowingly **and unlawfully** destroy, mutilate, disfigure,
2 deface, injure, or remove **without authorization any human remains from a cemetery or**
3 **burial ground or other place of interment, entombment, or inurnment or who shall**
4 **knowingly and unlawfully destroy, mutilate, disfigure, deface, injure, or remove** any tomb,
5 monument, or gravestone, or other structure placed in such cemetery or burial ground or place
6 of burial of any human being, is guilty of a class A misdemeanor.

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

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

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

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

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

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

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

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

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

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

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

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

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

[214.290. Any cemetery operator who within ninety days from the
2 effective date of sections 214.270 to 214.410 elects to operate a cemetery which
3 exists on the effective date of sections 214.270 to 214.410 as an endowed care
4 cemetery or who represents to the public that perpetual, permanent, endowed,

5 continual, eternal care, care of duration or similar care will be furnished cemetery
6 property sold, shall before selling or disposing of any interment space or lots in
7 said cemetery after the date of such election, establish a minimum endowed care
8 and maintenance fund in cash in the amount required by section 214.300 unless
9 an endowed care fund is already in existence to which regular deposits have been
10 made (whether or not the fund then existing shall be in the minimum amount
11 required under section 214.300).]

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